

UNIVERSIDAD COMPLUTENSE DE MADRID

FACULTAD DE FILOLOGÍA

Departamento de Filología Inglesa II
(Literatura de los Países de Lengua Inglesa)



TESIS DOCTORAL

**The rhetoric of American exceptionalism in Obama's speeches on
health care reform**
**La retórica del excepcionalismo americano en los discursos de Obama
sobre la reforma sanitaria**

MEMORIA PARA OPTAR AL GRADO DE DOCTOR

PRESENTADA POR

Carmen Serrano Lanzuela

Director

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Madrid, 2014

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EUROPEA

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Bajo la dirección del doctor

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Madrid, 2013

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FACULTY OF PHILOLOGY

English Department II (Literature)



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SANITARIA**

EUROPEAN DOCTORAL THESIS

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Madrid, 2013

Acknowledgements

I would like to acknowledge many people for their invaluable support and assistance.

I am grateful to my supervisor, Professor Dámaso López García. I will always be indebted to him for his kindness, continual encouragement, wise and cunning advice and very timely and witty sense of humour. I would also like to extend thanks to Professor Glyn Hambrook (University of Wolverhampton) and Professor Iwan Morgan (Institute for the Study of the Americas at University College London) for their support and guidance during the research. Thanks are due to Professor Nigel Bowles (Rothermere American Centre at the University of Oxford), Mr. Paul Sullivan (Senate House, University of London), Ms. Tony Fine (Fordham University), Ms. Mariah Strauch-Nelson (Georgetown University) and Steven Hobbs (British Library) for the help and assistance they provided.

Notwithstanding all the above support for this project, any errors and/or omissions are solely my own.

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Acronyms and Abbreviations

AALL	American Association of Labor Legislation
AARP	American Association of Retired Persons
ACA	Patient Protection and Affordable Care Act of 2010
ACO	Accountable Care Organization
AFCD	Aid For Dependent Children
AFDC	Aid to Families with Dependent Children Programme
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AHCAA	Affordable Health Care for America Act of 2009
AHIP	America's Health Insurance Plans
AHRQ	Agency of Health Care Research and Quality
AE	American exceptionalism
AMA	American Medical Association
AMEC	African Methodist Episcopal Church
ARRA	American Recovery and Reinvestment Act of 2009
CBO	Congressional Budget Office
CDC	Centers for Disease Control and Prevention
CER	Comparative Effectiveness Research
CMS	Center for Medicare and Medicaid Services
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
CPI	Consumer Price Index
DHHS	Department of Health and Human Services

DHS	Disproportionate Share Hospital
DRG	Diagnostic Related Group
HER	Electronic Health Records
ED	Eastern District Court
EMTALA	Emergency Medical Treatment and Active Labor Act of 1986
ERISA	Employee Retirement Income Security Act of 1974
ESI	Employer – Sponsored Insurance
ESRD	End-Stage Renal Disease
FDA	Food and Drug Administration
FDCA	Food, Drug and Cosmetic Act of 1938
FFS	Fee for Service
FICA	Federal Insurance Contributions Act of 1935
FPL	Federal Poverty Level
FQHC	Federally Qualified Health Center
FPG	Federal Poverty Guideline
GDP	Gross Domestic Product
HAS	Health Systems Agencies
HC	Health Care
HCERA	Health Care and Education Reconciliation Act of 2010
HCR	Health Care Reform
HHS	Department of Health and Human Services
HIAA	Health Insurance Association of America
HIE	Health Insurance Exchange
HIPAA	Health Insurance Portability and Accountability Act of 1996

HITECH	Health Information Technology for Economic and Clinical Health
HMO	Health Maintenance Organization
HRSA	Health Resources and Services Administration
HSA	Health Savings Account
HSS	Health and Human Services
IMAB	Independent Medicare Advisory Board
IOM	Institute of Medicine
IPAB	Independent Payment Advisory Board
IRS	Internal Revenue Service
MAPD	Medicare Advantage Prescription Drug
MCO	Managed Care Organizations
MedPAC	Medicare Payment Advisory Commission
MHPA	Mental Health Parity Act of 1996
MPAC	Medicare Payment Advisory Commission
NCSC	National Council of Senior Citizens
NED	Non-economic damage
NFIB	National Federation of Independent Businesses
NIH	National Institutes of Health
NLRB	National Labour Relations Board
NSQIP	National Surgical Quality Improvement Program
NWFCO	Northwest Federation of Community Organizations
OECD	Organisation for Economic Co-operation and Development
PCORI	Patient-Centered Outcomes Research Institute
PHAB	Public Health Accreditation Board

PICO	People Improving Communities through Organizing
PIRA	Preserving Individual Responsibility Act of 1996
POTUS	President of the United States
PPACA	Patient Protection and Affordable Care Act of 2010
PPHF	Prevention and Public Health Fund
PSRO	Professional Standards Review Organization
SAQ	Safety Attitudes Questionnaire
SCHIP	State Children's Health Insurance Program
SCOTUS	Supreme Court of the United States
SGR	Sustainable Growth Rate
SHA	State Health Agency
SSAT	Society for Surgery of the Alimentary Tract
STS	Society of Thoracic Surgeons
TPA	Third-Party Administrator
TEFRA	Tax Equity and Fiscal Responsibility Act of 1983
UMWA	United Mine Workers of America
USPSTF	United States Preventive Services Task Force
VA	U.S. Department of Veterans Affairs
WHO	World Health Organization

Introduction

0.1 American Exceptionalism and Health Care

This work analyses key speeches by President Obama on health care from January 1st, 2009¹ to date from the point of view of American exceptionalism.

One of his main campaign promises² was to implement a much needed³ health care reform. Once at the White House he was determined to pursue this goal⁴ which was attained through the strenuous passing⁵ of

¹ 2009 was the year Senator Obama became the first African American to be sworn in to the highest office of a nation whose population of over 300 million includes more than 40 million black people; in itself this is an exceptional fact. <http://www.census.gov/main/www/popclock.html>

² “We need to come together to solve a set of monumental problems — two wars, a terrorist threat, a falling economy, a chronic health care crisis and potentially devastating climate change — problems that are neither black or white or Latino or Asian, but rather problems that confront us all.” “A More Perfect Union” Speech. National Constitution Center, Philadelphia, PA. March 18, 2008, 11:13 AM.

“‘If I don’t talk about this during the campaign then I can’t do it in the first year –and I want to do this,’ he told his policy team over the summer. ‘So figure out how we win the argument [with McCain].’” Jonathan Alter, *The Promise: President Obama, Year One*, Simon & Schuster, New York, NY, January 11, 2011, p. 32.

³ This need is further examined in chapter 3.

⁴ “The question was which bill, energy or health, Waxman’s committee should move on first. ‘It’s like choosing between two of your children,’ Obama told him. ‘But I care about health care more.’” Alter, op. cit., p. 255. Waxman was the chairman of the House of Energy and Commerce Committee at the time, i.e. April 2008.

the Patient Protection and Affordable Care Act (PPACA) on March 23, 2010. This law was challenged before several courts but received constitutional assent from the Supreme Court on June 28th, 2012.

The speeches on health care reflect the burdens that came with this legislative process: from Senator Obama's determination to reform health care, the difficulties in passing the law through Congress, the legal challenges, to the decision by the Supreme Court on its constitutionality. They serve as useful analytical descriptions of the situation of health care in America at the time, the need to reform this particular policy and the changes that the PPACA's implementation would entail to the American people, especially in terms of health care procurement.

American exceptionalism is used strategically by Obama in his speeches to convince the people that reform of health care carried out by the PPACA follows tradition, i.e. that the PPACA is in perfect accordance with America's deeply ingrained values.

Formally, Obama's rhetoric is riddled with references and jargon typical of aspects of American exceptionalism: *inter alia*, America as a chosen nation, as a Christian nation, as the epitome of capitalism, as an innocent nation.⁶ These references are aimed at convincing the American

⁵ "There was no such swift resolution when it came to health care reform. The ACA only emerged after a protracted and tortured passage that at various points looked as if it would stall." Alex Waddan. "Two years of achievement and strife: the Democrats and the Obama presidency, 2009-10" in Iwan Morgan and Philip John Davies. *Broken Government?, American Politics in the Obama Era*, University of London and the British Library, 2010. p. 149.

⁶ All these references are explored as myths by Richard T. Hughes in *Myths America Lives By*, University of Illinois, Illinois, 2003.

people that the PPACA is not an anti-American piece of legislation, as deemed by those opposing reform of health care envisaged by the PPACA.

Substantially, health care is a key policy area which blatantly portrays the United States as a truly exceptional nation since there is no universal coverage no public health care system as such. The PPACA is just one step in trying to change this situation.⁷

This piece of legislation has caused much controversy⁸ which goes to show that in studying American exceptionalism, this particular key policy is paramount. Those opposed to the law, basically the G.O.P. and its voters (especially of the extreme kind, a.k.a. Tea Party followers)⁹ claim, for instance, that the PPACA goes against America's individualism and its genuine distrust of government. Obama demonstrates in his speeches that the latter assertion is not just wrong but also dangerous and counterproductive in terms of reversing the situation of health care in America.

⁷ Some claim that it is not good enough: "PPACA falls well short of this goal; it reduces the number of uninsured people by only a bit more than half, from fifty-four million to a projected twenty-three million uninsured in 2019" Mark A. Hall, "Commerce Clause Challenges to Health Care Reform", *University of Pennsylvania Law Review*, Vol. 159, 2010 – 2011, p. 1852.

⁸ In the same line Obama says: "Still, I know the debate over this law has been divisive. I respect the very real concerns that millions of Americans have shared. And I know a lot of coverage through this health care debate has focused on what it means politically." Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room. June 28th, 2012. 12:15 P.M. EDT.

⁹ "So Barack Obama was elected to be our forty-fourth president. He didn't have my vote, but he had my prayers. So much of what he said on the campaign trail was nonsensical platitudes--just meaningless phrases, seemingly produced in a focus-group factory. But he did make one very specific pledge that I took seriously; he called for universal health care--another euphemism for the government control of, and ultimate takeover of, our health-care system." Michele Bachman, *Core of Conviction. My Story*, Sentinel HC, New York, 2011.

In sum, this work analyses American exceptionalism from both a formal point of view (through direct references in the speeches) and a substantial one (through changes envisaged by the PPACA and explored in the speeches). In other words, formally and substantially American exceptionalism is present in the speeches on health care and on the health reform launched by Obama.

0.2 Objectives

This work aims at attaining the following objectives:

- To analyse the effect of the use of American exceptionalism in Obama's speeches on health care and to prove that Obama includes elements of American exceptionalism in his speeches as an efficient rhetorical tool to shift public opinion and to explain key issues of the PPACA.
- To ascertain the influence of cultural beliefs and value priorities on public policies. American exceptionalism is a reflection of the culture of the United States. The study of American exceptionalism reflects a number of cultural beliefs and value priorities ingrained in the people which must have a reflection on public policies. If the latter do not reflect the former, the system carries a number of mechanisms to declare the policies null and void (e.g. certiorari or other means of judicial review). This work will prove that the PPACA is a reflection of those cultural beliefs (at least for those in favour of its full

implementation) and that the speeches highlight this fact through constant reference to American exceptionalism.

- To prove that American exceptionalism is a relevant concept in current American politics by analysing the speeches by Obama on health care reform as envisaged by the PPACA.
- To ascertain how recession influences policy-making and forces measures of a specific type. Could American exceptionalism's typical distrust of government impose painful economic circumstances to put aside this type of disdain and actually expect from government to implement typical welfare measures such as the PPACA?¹⁰
- To ascertain the extent to which American exceptionalism is an effective policy-making tool; especially in policies as convoluted as health care.¹¹
- Ultimately, the goal of this work is to analyze American exceptionalism and health care together and see how they combine and draw from each other.

In order to meet these objectives I have used the methods and sources described in the next section.

¹⁰ "In times of crisis we must look to someone to save us: in the Revolutionary crisis, the founding fathers; in the slavery crisis, Lincoln; in the Depression, Roosevelt; in the Vietnam – Watergate crisis, Carter." Howard Zinn, *A People's History of the United States*, HarperCollins Publishers, New York, 2003, p. 632.

¹¹ "Most developed countries have a single health care system, with a common philosophy about coverage, access, and costs. The United States does not. Here, the multiple aspects of health care access, delivery, and performance make the job of describing health care in the United States particularly onerous." David Cutler and Patricia Keenan, "Health Care" in Peter H. Schuck and James Q. Wilson (eds.), *Understanding America*, Public Affairs, New York, 2008, p. 449.

0.3 Methodology and Sources

0.3.1 Methodology

I have used three qualitative **key sources**: Obama's speeches, academic literature on American exceptionalism and academic writing on health care reform; their studied combination has resulted in this work.

Bearing in mind these three sources of information, I have followed the following **research strategy**: I identified parts of speeches where reference is made to an aspect of health care; e.g. free riders. Next, I identified parts of speeches that mentioned elements of American exceptionalism in relation to that particular aspect of health care, e.g. the right to remain uninsured as a clear expression of a tradition of individualism. With this approach in mind I used articles from academia to identify the latter elements (individualism, religion, supremacy, self-improvement...). I also used articles by scholars to get the necessary background information on key health care aspects. In effect, academic studies provided me with the necessary background for the analysis of the speeches. In fact, this was a paramount preliminary step in order to be in a position to work on them. These articles were not only used at this early stage but also later while working on the speeches in order to achieve a more profound study of American exceptionalism and health care. Thus, it was an ongoing process – the more deeply I examined the speeches the

more informative and clear the articles were; and likewise, the in-depth study of the articles provided invaluable information to re-read the articles in a different new light.

This praxis was used to examine speeches on a specific policy (in the case of this work, health care) and in light of a theoretical, philosophical and cultural framework (that provided by American exceptionalism). There are plenty of compilations of speeches by the incumbent but they do not focus on any aspect in particular – their order is ‘merely’ chronological; and they all clearly show an ulterior motive, i.e. to praise the President. Good examples are Henry Russell’s compilation (*The Politics of Hope*)¹² or Jacklyn Easton’s whose compilation carries a self-revealing title and byline: *Inspire a Nation. Barack Obama’s Most Electrifying Speeches from Day One of His Campaign Through His Inauguration*.¹³ Arthur Schlesinger Jr.¹⁴ analyses the inaugural speeches of the presidents of the United States from George Washington to George W. Bush. It is hoped that the new edition will carry Obama’s.¹⁵

Speeches have been used before as perfect examples of the masterful use of rhetorical devices to move “the masses”, i.e. as

¹² Henry, Russell, *The Politics of Hope*, New Holland Publishers, London, 2009.

¹³ Jacklyn Easton, *Inspire a Nation. Barack Obama’s Most Electrifying Speeches from Day One of His Campaign Through His Inauguration*, Publishing 180, 2009.

¹⁴ Arthur M. Schlesinger Jr. and Fred L. Israel (eds.), *The Inaugural Addresses of the Presidents of the United States. 1789 – 2005*, Checkmarck Books, New York, 2007.

¹⁵ And it does indeed in the 2009 edition. Arthur Meier, Jr. Schlesinger (Introduction), Fred L. Israel (Commentary), *My Fellow Citizens: The Inaugural Addresses of the Presidents of the United States, 1789-2009 (Facts on File Library of American History) [Hardcover]* Facts on File, 1 edition, December 1, 2009.

instruments of persuasion; for instance, Roosevelt's fireside chats.¹⁶ As such their study belongs to a different branch of knowledge (rhetoric or communication studies).

This work focuses on a given policy, i.e. health care; and the focus isn't so much on rhetorical devices as on the content of the speeches, e.g. how Obama describes the situation of health care in America in order to convince the American people of the need to reform health care and of the need to endorse the PPACA since its content is in accordance with typical American values.

The use of this particular praxis builds on and adds new knowledge to a methodological tradition of undergoing qualitative research by selecting specific speeches by content (i.e. speeches on health care) and using them as data to pursue a specific purpose in mind (i.e. the analysis of American exceptionalism).

0.3.2 Sources – Research Materials Used

The research materials I have used are basically three: Obama's speeches, scholarly articles on American exceptionalism and scholarly

¹⁶ Greenstein draws a comparison of the leadership style from FDR to Obama. He analyses a number of qualities, among them the "president's proficiency as a public communicator." Fred I. Greenstein, *The Presidential Difference*, Princeton University Press, Princeton, 2009, p. 5.

I mention Roosevelt since: "in his communication practices, as in much else, FDR provides a benchmark for his successors. His soaring rhetoric roused imaginations and stirred souls. [...] As a communicator, Roosevelt is to later presidents what Mozart and Beethoven have been to their successors – inimitable but endlessly inspiring. Future presidents are unlikely to equal FDR's eloquence, but they could scarcely do better than to immerse themselves in his record, reading his addresses, listening to recordings of them, and studying his public presentation of self." Ibid., p.22.

articles on healthcare and the PPACA. My approach to them has been qualitative. I have chosen this selective approach to materials to prove that at key moments in time Obama includes elements of American exceptionalism in his speeches. This could have also been proven (in fact, to a greater extent, or more authoritatively) through a random selection of speeches but I have chosen those that were given in moments considered by the media and scholars as paramount. In fact, the speeches themselves establish the significance of the moment (e.g. the day Obama signed the law). I have detailed the importance of every speech in the ensuing section.

0.3.2.1 Primary Sources

The main primary sources that I have used for this work are the speeches by President Obama. I'm including a list of speeches which show the 44th president was never short for words.¹⁷ In order to meet the aforementioned goals I chose those speeches that were most significant for the reasons I detail below:

1. March 9, 2009 – Washington, D.C. Obama Addresses Decision to Lift Embryonic Stem Cell Limits. East Room – White House.

¹⁷ In this sense, Greenstein says: "As is evident from the 2004 rhetorical tour de force that put him on the political map, Obama is a gifted public Communicator. His strength derives in part from his oratorical gifts and in part from his message. Obama draws on his aides to refine and polish his addresses, but he is his own principal speechwriter. His opponents in the 2008 primary and general elections acknowledged his eloquence but attempted to turn in against him by claiming that there was little substance behind his talk. After his election, however, Obama was all substance, setting his program forth in detail. Little more was heard of the claim that his rhetoric was empty." Greenstein, *op. cit.*, p. 216.

Stem cell research is a decisive matter which hosts a traditional dilemma – religion / ethics v. science. The political expression of this dilemma has conservatives denying the possibility of using human stem cells, since this kind of research entails killing human embryos; and progressives encouraging such possibility with a view to further research into genetic therapies in order to cure diseases for which there is no effective alternative treatment. I chose this speech not only for the latter substantive reasons but also because of the numerous references made to elements of American exceptionalism.

2. June 15, 2009 – Chicago. Obama’s Speech on Health care Reform at the American Medical Association’s Annual Conference.

The American Medical Association is a paramount stakeholder in favour of this reform. This has not always been the case.¹⁸

President Obama addresses issues from the standpoint of the medical profession.

3. September 9, 2009 – Washington D.C. – President Obama addresses a joint session of Congress on health care.
4. December 24, 2009 – Washington, D. C. – Remarks by the President on Senate Passage of Health Insurance Reform. State Dining Room.

¹⁸ See section on reasons for lack of national health system (Chapter 5). This was made obvious in the late 30s and given the difficulties of carrying out public reform posed by the medical profession or as Funigiello puts it: “organized medicine’s ability to outspend and outmaneuver health reformers and liberal legislators.” Funigiello, *op. cit.*, p. 3.

5. March 21, 2010 – Washington, D.C. – Obama makes remarks after the House of Representatives passed the bill on health care reform.
6. March 23, 2010 – Washington, D. C. – Obama signs health care bill into law.
7. September 21, 2010 – Washington, D. C. – Obama holds a teleconference on the PPACA.

This teleconference is important because it dealt with a bill of rights for patients, a real novelty. Moreover, it was given using a very modern method – a teleconference. Obama is meant to be the first president to have used information technologies intensively in order to win both general elections in 2008 and 2012.¹⁹ This conference gathered representatives from different religious congregations. His words emphasized the importance of religion in the United States and how these representatives played a major role in informing about the benefits to their people.

8. September 22, 2010 – Falls Church, VA. – Obama holds a backyard discussion on health care reform and the Patient Bill of Rights.

It's the only speech where he uses the word "mandate."

9. June 28, 2012 – Washington, D. C. – Remarks by the President on Supreme Court Ruling on the Affordable Care Act.

¹⁹ "He was helped by his campaign's innovative use of the Internet to mobilize supporters and raise funds, as well as its pursuit of delegates in the states in which delegates are selected by caucuses, which the Clinton forces tended to ignore." Greenstein, op. cit., p. 215.

It was given after the Supreme Court of the land declared the PPACA constitutional.²⁰

I have included an appendix with these speeches highlighting relevant references to American exceptionalism (Appendix I). I have also drawn a chart containing all the speeches by Obama (189) which tackle health care reform (Appendix II).

Transcripts of speeches were retrieved from the American Presidency Project (presidency.ucsb.edu), the White House (whitehouse.gov/briefing-room/speeches-and-remarks) and the Washington Post (washingtonpost.com/blogs/wonkblog/wp/tag/transcripts/).

I have also borne in mind the Congressional and Senatorial debates on the PACCA; and relevant judgments by the Supreme Court of the United States. The key decision for the present purposes is *National Federation of Independent Business v. Sebelius*,²¹ June 28, 2012. The various challenges (28) before the Courts of Appeal were also taken into consideration. The different reports submitted by State Attorneys to challenge the constitutionality of PPACA and the reply by the federal Attorney General are also of paramount interest as they counter the arguments of each party.

²⁰ *National Federation of Independent Business v. Sebelius*, June 28, 2012.

²¹ *Sebelius* refers to Kathleen Sebelius, the Secretary of Health and Human Services. She was the former Governor and former Insurance Commissioner of Kansas.

0.3.2.2 Secondary Sources

With regard to secondary sources I have used literature on American exceptionalism, health care issues, welfare, political speeches and cultural studies.

This work has been greatly enriched by research on the study of a particular aspect of health care, i.e. that provided by the pharmaceutical sector, conducted at the following institutions:

- Fordham University,
- the New York Public Library (Science, Industry and Business Library)
- Georgetown University
- Library of Congress;
- the Université Libre de Bruxelles;
- the British Library
- the University of Oxford.

The different periods of intense research abroad proved invaluable to gain confidence on the feasibility of this thesis. I have researched for three months at the University of Wolverhampton, the University of Oxford (Rothermere American Centre), the University of London (Institute for Advanced Studies) and the British Library.

I have presented papers at Manchester Metropolitan University and the Franklin Institute (University of Alcalá) on the use of antitrust law to reform health care in the United States; and at the 2013 American Political Science Association 109th Annual Meeting and Exhibition on American values and the politics of health care. I have also published two articles related to the subject (*Comparing F.D. Roosevelt and B.H. Obama in*

Developing Welfare,²² *Using Antitrust to Reform Health Care in the United States*).²³ Preparing all this work was of immense benefit in terms of providing me with the confidence on the value of my Ph.D.

0.4 Structure and Content

The PPACA, the speeches and discussions on both, by academia and the media, make reference to concepts and ideas that belong to sundry elements of American exceptionalism. Each chapter dissects a key element of health care reform and examines how it is reflected on the speeches and the PPACA while making reference to elements of American exceptionalism. This work proves that there are a number of topics, central to health care and typical of American exceptionalism, that regularly feature in the speeches; it also shows that elements of health care, which are subject-matter of the PPACA, have American exceptionalism at their core.

²² - Serrano Lanzuela, Carmina, "Comparing F. D. Roosevelt and B. H. Obama in *Developing Welfare*", *Revista de Estudios Norteamericanos* 15, University of Seville, Seville, Spain, 2011, pp. 101-121.

- Serrano Lanzuela, Carmina, "Comparing F. D. Roosevelt and B. H. Obama in *Developing Welfare*" in Gurpegui, José Antonio & Isabel Durán (eds.), *The Backyard of the U. S. Mansion*, Biblioteca Benjamin Franklin, Instituto Franklin de Investigación en Estudios Norteamericanos, 2012, pp. 193 – 212.

²³ Serrano Lanzuela, Carmina, "*Using Antitrust to Reform Health Care in the United States*" in *North and South: The United States, the European Union and the Developing World*", Instituto Franklin de Investigación en Estudios Norteamericanos, Universidad de Alcalá, 2013, pp. 95 – 110.

- Chapter 1 ('What is American Exceptionalism?') briefly examines the concept of American exceptionalism and identifies elements typically used throughout the speeches.
- Chapter 2 ('Health care in the United States') consists chiefly of describing the situation of health care in the United States; basically the number of uninsured, the lack of health insurance, life expectancy, child mortality, the high price of health care and health care spending.
- Chapter 3 ('The Need to Reform') reflects the discussion on whether a real need for reform existed; it describes the different views on how to carry it out; whether implementing universal coverage is necessary; and the several failed attempts to do so in the past.
- Chapter 4 ('Theoretical Background to Reform') leaves aside constitutional and economic reasonings to reform and explores the moral imperative to do so: it explores high-minded moral values and concepts such as socialized medicine and welfare and examines speeches to prove how Obama steers the moral strategy depending on the circumstances.
- Chapter 5 ('The Government Role in Providing Health Care') describes the breadth of Government power over health and examines the absence of a national health insurance system; i.e. the reasons behind this absence and whether the PPACA is meant to be a step towards a presence of government in providing health care.
- Chapter 6 ('Reform comes with the PPACA') describes the economic context when the PPACA was passed; it highlights why it is an

exceptional law; how it relates to American exceptionalism; the different reactions when it was passed; the future of the law and the reform it envisages.

- Chapter 7 ('The Individual Mandate') describes the concept of the individual mandate and explores the diverse explanations used to prove its questioned constitutionality in terms of concepts belonging to American exceptionalism.
- Chapter 8 ('The PPACA and Access to Health Care') examines the relevance of the individual mandate when dealing with the problem of the high number of uninsured and free riders; it also describes the controversy on the expansion of coverage under Medicaid.
- Chapter 9 ('Individual Rights and Distrust of Government') studies the decline of extreme individualism and the parallel growth of collective action.
- Chapter 10 ('The PPACA's Patient's Bill of Rights') serves as a nice denouement to this work. Though the PPACA does not establish a bill of rights, as such, the number of provisions related to human rights enables scholars to talk about an implicit one.

0.5 Theoretical Background

The following is an account of the literature on American exceptionalism. Its study is essential in order to get a good idea of the main issues tackled by scholars when proving that American exceptionalism is either a reality or just a belief that has seldom matched reality.

There is abundant literature on the **historical and constitutional basis and the religious implications of American exceptionalism** which is used to prove that the tradition of the founding fathers has taken root in the minds of most Americans. Thus, experts on American exceptionalism focus on the historical origin of the concept, and its main tenets in terms of ideology, politics, economy, religion and welfare. These “themes” were first studied by **Lipset** in his seminal piece of work on American exceptionalism from 1996.²⁴ His main contention is that in order to study how exceptional a given nation is, it is imperative, in terms of methodology, to draw comparisons with other nations. Thus, he compares the US to Canada, to the UK, to France. He also carries out a comparative study of America’s revolt against colonial rule with nations emerging on the world scene in the 60s through the process of de-colonialization.²⁵ This work takes on this idea and thus compares the United States to other OECD members.

Hughes²⁶ analyses a series of **myths** that lie at the heart of the American experience (myth of the chosen nation, of nature’s nation, of the Christian nation, of the millennial nation, and of the innocent nation). He believes that these myths have provided the United States with a perfect veil to avoid facing reality and this, in turn, threatens the principles established in the Constitution. This idea is further developed by Hodgson²⁷

²⁴ Seymour Martin Lipset, *American Exceptionalism. A Double-Edged Sword*, Norton, New York, 1997.

²⁵ Seymour Martin Lipset, *The First New Nation*, Transaction Publishers, New Jersey, New Brunswick, 2003.

²⁶ Richard T. Hughes, *Myths America Lives By*, University of Illinois, Illinois, 2003.

²⁷ Geoffrey Hodgson, *The Myth of American Exceptionalism*, Yale University Press, New Haven and London, 2009.

who argues that America is not as exceptional as some would like to think; he provides a historical account to prove this point.

Wrobel²⁸ provides a historical account to explore the formation of the **frontier** and establishes the relation between this formation and that of American exceptionalism. Edwards and Weiss²⁹ focus on the rhetoric used in a series of contexts, such as presidency, foreign policy, religion, economics and American history.

Four authors analyse **policies** from the point of view of American exceptionalism. Ignatieff³⁰ analyses America's behaviour in relation to international human rights in order to examine how it differs from that of the majority of Western nations; Lockhart³¹ explores policies from the point of view of tax regimes, abortion policy, immigration and citizenship; so do Schuck and Wilson.³² Graham K. Wilson³³ studies the government's contribution in a given policy to ascertain to what an extent such policy is handled differently in America.

²⁸ David M. Wrobel, *The End of American Exceptionalism*, University Press of Kansas, Lawrence, 1993.

²⁹ Jason A. Edwards and David Weiss (eds.), *The Rhetoric of American Exceptionalism*, Jefferson, McFarland & Company, North Carolina and London, 2011.

³⁰ Michael Ignatieff, *American Exceptionalism and Human Rights*, Princeton University Press, Princeton and Oxford, 2005.

³¹ Charles Lockhart, *The Roots of American Exceptionalism*, New York, Palgrave Macmillan, 2011.

³² Peter H. Schuck and James Q. Wilson (eds.), *Understanding America*, Public Affairs, New York, 2008.

³³ Graham K. Wilson, *Only in America?*, Chatham House Publishers, New Jersey, Chatham, 1998.

There is also abundant literature on **health care**, either scholarly reviews or op-ed articles which either dismiss the PPACA or praise the ground-breaking changes that it entails. Those who denigrate the PPACA use elements of American exceptionalism to prove that it is contrary to American values; basically, because the contention is that the PPACA's establishment of an individual mandate is an imposition on the individual which hurts two basic tenets of America's creed: the non-intrusion of government on individual affairs, and the individual's right to decide whether to purchase health insurance. In this respect, constitutionalists use judicial precedents and legal reasonings indistinguishably to back up their arguments.³⁴

Dutton³⁵ draws a twentieth-century comparison between health care problems and solutions in the United States and France and proves how much each system benefits from the other. Walt³⁶ analyses these problems from the point of view of the different stakeholders. Kamerow³⁷ focuses on critical issues such as prevention and public health in the United States. Quadagno³⁸ examines the different attempts to implement universal coverage; he gives a historical account of the numerous failures to implement it; so does Funigiello.³⁹

³⁴ See chapter 7.

³⁵ Paul V. Dutton, *Differential Diagnoses*, ILR Press, Ithaca and London, 2007.

³⁶ Gill Walt, *Health Policy*, Zed Books, London and New Jersey, 1994.

³⁷ Douglas B. Kamerow, *Dissecting American Health Care*, RTI Press, North Carolina, 2011.

³⁸ Jill Quadagno, *One Nation Uninsured*, Oxford University Press, Oxford, 2005.

³⁹ Philip J. Funigiello, *Chronic Politics*, University Press of Kansas, Kansas, 2005.

At the time of drafting this thesis, there were no books published on the PPACA with the exception of Jacobs and Skocpol's⁴⁰ explanatory overview of the benefits envisaged by the law.

However, there is no literature that analyses Obama's speeches from the point of view of American exceptionalism; and neither is there any on speeches on a particular policy. Indeed, here lies the research space that I intend to fill, i.e. my contribution through this work to the current theoretical state of affairs.

0.6 Cultural Studies

This chapter examines this work in the light of cultural studies and proves that it falls within the boundaries of this field of study.

This work can be easily catalogued within the boundaries of American studies since the question on what the adjective "American" involves is at the core of American studies; in other words, American exceptionalism provides the theoretical background to American studies.

American studies are closely interrelated to cultural studies. In this sense, cultural studies have played a **twofold role** vis-à-vis other disciplines such as history, sociology and politics: it has borrowed thematic content from other disciplines but has also contributed to the development of the latter:

⁴⁰ Lawrence R. Jacobs and Theda Skocpol, *Health Care Reform and American Politics*, Oxford University Press, Oxford, 2010.

“‘Cultural studies’ extensive theoretical literature has proven particularly helpful as a means of facilitating the intellectual trade across disciplines [such as American Studies] that shared an interest in the problematic of culture: that is, provided some methodological strategies, as well as the theoretical rationale, to develop interdisciplinary fields through the mobilization of its conceptualization of culture and its application to particular research sites or problems.”⁴¹

Turner asserts that one of the best examples of this two way contribution by cultural studies is American studies since “the field in question [American studies] spent a great deal of time discussing its relation with cultural studies”: “from the 1970s onward into the 2000s, American studies has been engaged in a wide-ranging debate about the nature and future of the field: [...] as new social and political formations demanded to be reflected in the questions asked by American studies scholars, and as the commitment to ‘American exceptionalism’ was questioned.”⁴² This questioning, Denning argues, forms part of a tradition among American historians that questions the place of the United States in the international arena and suggests that democracy in America is not real since it excludes

⁴¹ Graeme Turner, *What's Become of Cultural Studies?* SAGE, London, 2012, p. 25.

⁴² Ibid.

many from its benefits, i.e. “the subordinated populations of the United States.”⁴³

The idea of a sole American culture, conceived as a unified whole, has its origin in the Cold War when there was a need to establish what made the United States culture exceptional: it was a time “when public debate was structured by the perceived opposition between the aggressive empire of the Soviet Union and the supposedly disinterested, democratic republic of the United States.”⁴⁴ This idea easily follows the assertion of the existence of a truly exceptional American identity;⁴⁵ and the origin of both can be found in the existence of an ‘American Mind’ which feeds on an American creed:⁴⁶ “That mind is more or less homogeneous. Though it may prove to be complex and constructed of many different layers, it is in fact a single entity.”⁴⁷ Clear contributors to such ‘Mind’ are found in the country’s leading thinkers: “Williams, Edwards, Franklin, Cooper, Emerson, Thoreau, Hawthorne, Melville, Whitman, Twain, Dewey, Niebuhr, et. al.”⁴⁸

Since this tradition did not include the “subordinated populations” mentioned above, it was likewise questioned by those particular

⁴³ Michael Denning, “The Cultural Front: The Labouring of American Culture in the Twentieth Century”, *American Quarterly* 28, London, 1996, p. 356-380.

⁴⁴ Stuart Hall, “Notes on Deconstructing the Popular” in Raphael Samuel (ed), *The People’s History and Socialist Theory*, London, 1981, p. 226 – 239.

⁴⁵ On American identity see Deborah Madsen, “Origins: Exceptionalism and American Cultural Identity” in *American Exceptionalism*, BAAS, Edinburgh, 1998, p. 16 – 40.

⁴⁶ The “American mind” is described in the section on the “American creed”.

⁴⁷ Gene Wise, *American Historical Explanations: A Strategy for Grounded Inquiry*, University of Minnesota, Minneapolis, 1973.

⁴⁸ Ibid.

“practitioners of American Studies [who] sought to understand the United States precisely so as to critique its racism, classism, sexism, and xenophobia.”⁴⁹

This work is also linked to cultural studies by way of the political theory involved in the concept of American exceptionalism since this is “the central structure of political discourse in America”⁵⁰ and a “core aspect of American culture.”⁵¹

Political thought seeks to find an explanation for the existence of distinctive American institutions and practices. The explanations provided by American exceptionalists are numerous and differ on the relative weight and assignment of cause and effect: “The absence of feudalism, religious diversity, the peculiar character of the revolution for independence, fortuitous circumstances surrounding early political development, the genius of the founding, the conjunction of race and ethnicity, cheap land, early suffrage for white males, the separation of work and residence are some of them.”⁵²

This field of knowledge also questions whether American exceptionalism is real or a myth: “to be an American (unlike being English or French or whatever) is precisely to imagine a destiny rather than to

⁴⁹ George Lipsitz, “Listening to learn and learning to listen: popular culture, cultural theory and American studies”, *American Quarterly* 42 (4), December 1990, p. 615 – 26.

⁵⁰ Ibid.

⁵¹ Leslie Fiedler, “Cross the Border-Close the Gap” in *The Collected Essays of Leslie Fiedler*, Vol. 2, Stein and Day, New York, 1971, p. 473.

⁵² Philip Abbot, “Redeeming American exceptionalism /redeeming political science: An analysis of Judith Shklar’s Presidential Address”, *Social Science Journal*, Vol. 32 Issue 3, United States, 1995, p. 219.

inherit one; since we have always been, insofar as we are Americans at all, inhabitants of myth rather than history.”⁵³ This idea has been explored in depth by Hughes⁵⁴ who draws a historical account of the country from this perspective: from the colonial period with its myth of the chosen nation to the twentieth century with its myth of the innocent nation.

The combination of cultural studies and political studies has rendered different perspectives from which American exceptionalism has been studied: some scholars describe America as the most free and powerful country on earth (e.g. David M. Potter, Seymour Lipset, C. Vann Woodward); a fact which has enabled alteration of the relationships “between the various levels of society without assuming a class struggle, [...] without necessarily treating one class as a victim or the antagonist of another.”⁵⁵ Others dwell on the idea of American exceptionalism as a perfect tool “for reform or even revolution.”⁵⁶ Others consider that the task of political theory revolves around the concept of redemption: either America is a redeemed nation or in need of urgent redemption.⁵⁷

All these different quandaries and doubts have been studied by political scientists and prove that American exceptionalism is not an isolated theory since it builds upon and adds to other fields of knowledge.

⁵³ Ibid.

⁵⁴ Hughes, loc. cit.

⁵⁵ David M. Potter, *People of Plenty*, University of Chicago Press, Chicago, 1954, pp. 118-119.

⁵⁶ Abbot, loc. cit.

⁵⁷ Judith N. Shklar, "Redeeming American Political Theory", *American Political Science Review* 85, 1991, pp. 3, 5.

1 What is American Exceptionalism?

There's not a liberal America and a conservative America; there's the United States of America. There's not a black America and white America and Latino America and Asian America; there's the United States of America.

*Barack Obama Keynote Address at the 2004 Democratic National Convention, Boston, July 27, 2004.*⁵⁸

I believe in American exceptionalism, just as I suspect that the Brits believe in British exceptionalism and the Greeks believe in Greek exceptionalism. I'm enormously proud of my country and its role and history in the world.

*News Conference by President Obama, Palais de la Musique et Des Congres, Strasbourg, April 4, 2009.*⁵⁹

1.1 Introduction

In order to carry out the objectives previously established, a necessary preliminary step is to analyze the concept of American

⁵⁸ Retrieved from www.britannica.com/blackhistory/article-9442554

⁵⁹ Retrieved from www.whitehouse.gov/the-press-office/news-conference-president-obama-4042009

exceptionalism, its theoretical roots, its practical significance; and to highlight the values of American exceptionalism used by President Obama.

1.2 Development of the Concept

Most literature on American exceptionalism starts with the historical origin of the concept and most historical accounts establish 1630 as the starting point: it is the date when Puritan settler **John Winthrop**⁶⁰ exhorted the passengers on the *Arabella* “to be a city on a hill,” “a light to the nations”⁶¹ in direct reference to Jesus’s sermon on the Mount.⁶² He urged them to make New England a model for future settlements since the “eyes of all people are upon us.”⁶³

Thomas Paine also described America as the last remnant of liberty in *Common Sense*. This idea was further developed centuries later at the onset of WW1 by Woodrow Wilson: since America was a bastion of freedom it was then the nation’s mission to spread liberty abroad.

⁶⁰ Litke signals John Winthrop’s speech as the beginning of the American political tradition and argues that it falls on “the exemplary side of the American exceptionalism divide” between two senses: imperial and exemplary. Justin B. Litke, “Varieties of American Exceptionalism: Why John Winthrop Is No Imperialist”, *Journal of Church and State*, vol. 54, no. 2, p. 197.

⁶¹ John Winthrop, “A Model of Christian Charity Written on Board the Arbella, on the Atlantic Ocean, 1630”, *Collections of the Massachusetts Historical Society*, 3rd series, 7, 1838, Boston: Hanover Historical Texts Project Scanned by Monica Banas, August 1996, pp. 31-48. Not yet proofread.
<http://history.hanover.edu/texts/winthmod.html>

⁶² New Testament’s Gospel of Matthew. "You are the light of the world. A city that is set on a hill cannot be hidden" (Matthew 5:14).

⁶³ Winthrop, loc. cit.

Alexis de Tocqueville,⁶⁴ the French political philosopher and historian described various aspects of American social and political life by drawing comparisons to his native France in his two volumes of *Democracy in America*, from 1835 and 1840. He focused on the differences between the young American nation and the socio-political structures in Europe at the time. Thus, he presented America as “the exception to the international⁶⁵ rule.”⁶⁶

Tocqueville’s analysis is the “handbook” of American exceptionalism since he was the first to refer to the United States as exceptional: “he is, therefore, the initiator of the writings on American exceptionalism.”⁶⁷ Lipset is also keen in pointing out that Tocqueville’s work is one of the best known examples of a literary genre, i.e. foreign traveller literature; and is “one of the most important bodies of writing dealing with this country.”⁶⁸

The actual term “American exceptionalism” was coined by **Joseph Stalin**, who condemned it as a heresy in 1929.⁶⁹

⁶⁴ Alexis de Tocqueville, *Democracy in America*, Signet Classics, New York, 2010.

⁶⁵ An exception to the international rule since, as Lipset points out, “the comparison was broader than just with France; no other European country with the partial exception of Great Britain was then a democracy.” Op. cit. p. 18.

⁶⁶ Rico Neumann and Kevin Coe, “The Rhetoric in the Modern Presidency. A Quantitative Assessment” in Jason A. Edwards and David Weiss (eds), *The Rhetoric of American Exceptionalism*, 2011, p. 12.

⁶⁷ Lipset, op. cit. p. 17.

⁶⁸ Ibid.

⁶⁹ Terrence McCoy, “How Joseph Stalin Invented 'American Exceptionalism'”, *The Atlantic*, 15 March 2012.

President **John F. Kennedy** used Winthrop's "city upon a hill" when he declared that "more than any other people on Earth, we bear burdens and accept risks unprecedented in their size and their duration, not for ourselves alone but for all who wish to be free."⁷⁰

Ronald Reagan made use of the rhetoric of American greatness to counter President Jimmy Carter's on the crisis of national confidence:

"We are a nation under God. I've always believed that this blessed land was set apart in a special way, that some divine plan placed this great continent here between the oceans to be found by people from every corner of the Earth who had a special love for freedom and the courage to uproot themselves, leave homeland and friends, to come to a strange land. And coming here they created something new in all the history of mankind—a land where man is not beholden to government, government is beholden to man."⁷¹

President Clinton coined the term "indispensable nation" at a news conference ⁷² where he announced the members of his national security team: ⁷³ "Now as we embark upon a new term, our responsibility is to build

⁷⁰ Department of State Bulletin, December 4, 1961: "Diplomacy and Defense: A Test of National Maturity", www.britannica.com/presidents/article-9116921

⁷¹ Ronald Reagan, "Remarks at a Spirit of America Rally in Atlanta, Georgia", January 26, 1984. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. www.presidency.ucsb.edu/ws/?pid=40294.

⁷² American Forces Press Service. President Clinton named his national security team for his second term, Washington, Dec. 6, 1996. www.defense.gov/News/NewsArticle.aspx?ID=40626

on the strong foundation laid in the last four years, to make sure that as we enter the 21st century America remains the indispensable nation, the world's greatest force for peace and prosperity, for freedom and security.” This idea was taken up by Obama when he asserted in his 2012 State of the Union address, that “America remains the one indispensable nation in world affairs—and as long as I’m President, I intend to keep it that way.”⁷⁴

With **President Bush**, American exceptionalism became a common argument in discussions on America’s role in international affairs⁷⁵ and was used in partisan politics when dealing with domestic policies.⁷⁶ Journalist Roger Cohen narrates his interview with **Senator Obama** during his first presidential race:

“Obama stands by the universality of the American proposition: life, liberty and the pursuit of happiness under a constitutional government of limited powers. ‘I believe in American

⁷³ Secretary of State-designate Madeleine K. Albright, Secretary of Defense-designate William S. Cohen, Director of Central Intelligence-designate Anthony Lake and National Security Adviser-designate Samuel R. Berger.

⁷⁴ United States Capitol. Washington, D.C., January 24th, 2012.

⁷⁵ The global multilateralism of the Clinton-Gore Democrats was seen in strict opposition to the American exceptionalism of the Reagan-Bush Republicans.

⁷⁶ The following passage from *National Review* shows the politics involved in the use of the term: “The debate between liberals and conservatives has become, ever more explicitly, a debate about American exceptionalism. [...] Conservatives seek to defend that exceptionalism from what they regard as the threat posed to it by the Obama administration’s agenda. Liberals have not yet hit on a unified response to this charge, but their commentary bears out our contention that these days their attitude toward American exceptionalism ranges from discomfort to hostility. This liberal commentary has had three themes: that American exceptionalism is a ridiculous or dangerous idea; that President Obama is just as supportive of it as conservatives are [...], and that conservatives are using exceptionalism to insinuate that Obama is a foreigner.” *National Review*, 21 December 2010.

exceptionalism,' he told me, but not one based on 'our military prowess or our economic dominance'. Rather, he insisted, "our exceptionalism must be based on our Constitution, our principles, our values and our ideals. We are at our best when we are speaking in a voice that captures the aspirations of people across the globe'." ⁷⁷

Once at the White House, he became **the first U.S. president to actually use the phrase American exceptionalism**: "I believe in American exceptionalism, just as I suspect that the Brits believe in British exceptionalism and the Greeks believe in Greek exceptionalism. I'm enormously proud of my country and its role and history in the world."⁷⁸ This particular comment has often been used by the GOP to prove that he is not an authentic American. Mitt Romney claimed that Obama believed that America "is just another nation with a flag"⁷⁹ in the race for a Republican candidate. Five months later, in a joint press conference, Obama responded thus: "It's worth noting that I first arrived on the national stage with a speech at the Democratic Convention that was entirely about American

⁷⁷ Roger Cohen, "Obama's American Idea", *New York Times*, 10 December 2007 <http://www.nytimes.com/2007/12/10/opinion/10cohen.html>

⁷⁸ <http://www.whitehouse.gov/the-press-office/news-conference-president-obama-4042009>
News Conference by President Obama, Palaiz de la Musique et Des Congres, Strasbourg, France, 4 April 2009.

⁷⁹ CNN Live Event/Special. Full Transcript of CNN National Security Debate, 20:00-22:00 Aired November 22, 2011 - 20:00 ET.
<http://edition.cnn.com/TRANSCRIPTS/1111/22/se.06.html>

exceptionalism, and that my entire career has been a testimony to American exceptionalism.”⁸⁰

The idea of American exceptionalism has become a common way of describing the nation’s identity, values, and history, and suggesting that the United States is an **exemplar for the rest of the world**.

1.3 American Creed

The values pertaining to American exceptionalism were first proclaimed in the **Declaration of Independence**.⁸¹ The first sentence of the second paragraph of the 1776 U.S. Declaration of Independence embodies the main tenets of the American creed: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness.” Slavery was, however, a reality till the middle of the 19th century and the enfranchisement of women did not become a reality till 1920.⁸² However, these principles were destined to become a creed; and it is a fact that they are present in the politics and culture of the nation. Seymour Lypset notes that “from Tocqueville and Martineau in the

⁸⁰ Joint Press Conference by President Obama, President Calderon of Mexico, and Prime Minister Harper of Canada, 2 April 2012.
<http://www.whitehouse.gov/the-press-office/2012/04/02/joint-press-conference-president-obama-president-calderon-mexico-and-pri>

⁸¹ These tenets “were also written into the Declaracion of Independence, the Preamble of the Constitution, the Bill of Rights and into the constitutions of the several states.” Myrdal, op. cit. p. 4.

⁸² 19th Amendment: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

1830s to Gunnar Myrdal in more recent times, foreign visitors have been impressed by the extent to which the values proclaimed in the Declaration of Independence have operated to prescribe social and political behaviour.”⁸³ It also has a legitimizing effect on the institutions for their ultimate goal is to fulfil the original political objectives.

Identity, values, history are embraced by the all-encompassing terms of “**American creed**” (Gunnar Myrdal),⁸⁴ “**political religion**” (Richard Hofstadter), “the traditional symbolic dimension of **American nationalism**” (Robert Bellah),⁸⁵ yet Hammer claims that such creed is based on a political myth, “an effective element of narrative.” Hughes⁸⁶ goes on to describe the myths America lives by.

Seymour M. Lipset establishes the tenets of the American creed in the 1997 seminal piece of work: *American Exceptionalism. A Doble-Edged Sword*: “The American Creed can be described in five terms: liberty, egalitarianism, individualism, populism, and laissez-faire.”⁸⁷ He claims that

⁸³ Seymour Martin Lipset, *The First New Nation*, op. cit. p. 97.

Myrdal develops this idea: “America, compared to every other country in Western civilization, large or small, has the most explicitly expressed system of general ideals in reference to human interrelations. This body of ideals is more widely understood and appreciated than similar ideals are anywhere else. The American Creed is notmerely –as in some cother countries- the implicit background of the nation’s political and judicial order as it functions. To be sure, the political creed of America is not very satisfactorily effectuated in actual social life. But as principles which ought to rule, the Creed has been made conscious to everyone in American society.”

Gunnar Myrdal, *An American Dilemma. The Negro Problem and Modern Democracy*, Harper Brothers Publishers, New York, 1942, p. 4.

⁸⁴ Ibid.

⁸⁵ Robert N. Bellah, “Civil Religion in America”, *Dædalus, Journal of the American Academy of Arts and Sciences*, from the issue entitled “Religion in America”, vol. 96, no. 1, Winter 1967, p.8.

⁸⁶ Hughes, loc. cit.

the American nation is founded on these principles; through their understanding both “the good and bad” in America can be explained. Lipset calls this duplicity the “double-edged sword” of American exceptionalism. Myrdal establishes the principles as well: the “ideals of the essential dignity of the individual human being, of the fundamental equality of all men, and of certain inalienable rights to freedom, justice, and a fair opportunity.”⁸⁸

In explaining the reasons for the importance of the existence of a disharmony or “gap” between “political ideal and political reality,” **Huntington**⁸⁹ establishes three distinctive characteristics of American political ideals; among them is the existence of an American creed:

“First is the scope of the agreement of these ideals. In contrast to most European societies, a broad consensus exists and has existed in the United States on basic political values and beliefs. These values and beliefs, which constitute what is often referred to as ‘the American Creed’ have historically served as a distinctive source of American national identity.”

The second reason specifies the ideals (very much alike to Lipset’s):

“In contrast to the values of most other societies, the values of this Creed are liberal, individualistic, democratic, egalitarian, and hence

⁸⁷ Lipset, *American Exceptionalism*, op. cit., p. 19.

⁸⁸ Myrdal, op. cit., p. 4.

⁸⁹ Samuel P. Huntington, *American Politics. The Politics of Disharmony*, Belknap Press of Harvard University Press, Harvard, August 15, 1983, p. 272.

basically anti-government and antiauthority in character. Whereas other ideologies legitimate established authority and institutions, the American Creed serves to delegitimize any hierarchical, coercive, authoritarian structures, including American ones.”

The third reason very much applies to the moment in history we are living. Pundits agree on a resurgence of the use of the phrase American exceptionalism and the ideals it conveys: it refers to “the changing intensity that varies from time to time and from group to group. Historically, American society seems to evolve through periods of creedal passion and of creedal passivity.” We are witnessing then a period of creedal passion.

This **American civil religion** is described by Robert N. Bellah as “a collection of beliefs, symbols, and rituals with respect to sacred things and institutionalized in a collectivity.”⁹⁰ **This collectivity is the American nation**, which “gradually assumed the traditional role of the church for most Americans.”⁹¹ “the celebration of a unified community, the nation, symbolically represented by the flag, demonstrates the most eminent function of civil religion: to create a common social bond. And it is the President’s task in fulfilment of his role as the ‘Hohepriester’ (high priest) of the American civil religion to inspire such a patriotic love for one’s nation by personal example.”⁹² Thus, Obama in a rhetorical manner makes reference to this collectivity which knows no colour: “There’s not a liberal America and

⁹⁰ Bellah, op. cit. p. 8.

⁹¹ Conrad Cherry (ed.), *God's New Israel: Religious Interpretations of American Destiny*, The University of North Carolina Press, North Carolina, 1998, p. 12.

⁹² Stefanie Hammer, *The role of narrative in political campaigning: An analysis of speeches by Barack Obama*, 15 August 2012, p. 270.

a conservative America; there's the United States of America. There's not a black America and white America and Latino America and Asian America; there's the United States of America.”⁹³

1.4 Obama's Speeches and American Exceptionalism

Obama has made **one explicit reference to American Exceptionalism** in his speeches which has been construed as a denial of the idea of exceptionality referred to a nation, a people: “there is an American exceptionalism, just as I suspect that the Brits believe in British exceptionalism, and the Greeks believe in Greek exceptionalism” (Press Conference in Strasbourg, April 4, 2009).

In the 2008 and 2012 campaigns he did make typical **references** to American exceptionalism in his speeches in order to boost his “truly American” profile⁹⁴ and to show that were he to be elected his reforms would follow suit. Söderlind uses an example from his first televised debate in the 2008 presidential campaign where “the Democratic nominee expressed his wish to restore ‘that sense of America being that shining beacon on a hill.’” This is, again, a direct reference to what is held as the founding text of American exceptionalism.

⁹³ Keynote by Illinois Senate Candidate at the Democrat Party Convention, Boston, 2004.

⁹⁴ And thus counter the accusation of being a foreigner and a Muslim, two facts used as weapons against him throughout his tenure. Nick Chiles, “Myth of Obama as Muslim and Foreigner Persists in AP Poll”, *Atlanta Star*, October 29, 2012. atlantablackstar.com/2012/10/29/myth-of-obama-as-muslim-and-foreigner-persists-in-ap-poll/

References like the latter are construed by scholars as appeals to the heart of Americans: “Obama embraces the one over the many and presents his vision of an America united as a nation based on commonly held political principles referred to as **the American Creed**.”⁹⁵

Söderling’s comment is more poignant. She does concede that “in using this timeworn image Obama showed his command of Yankee oratory, even if he seemed to confuse the beacon and the city. [...] Using a rhetoric associated with righteousness and moral responsibility Obama took the high moral ground away from his opponent’s recourse to mere personal experience and pragmatic policymaking. [...] As an encapsulation of the providential role of the United States in the world, the allusion to the founding text of American exceptionalism reinforced that the core of the country is neither a nation or a state, but an idea that somehow possesses the force to guarantee the safety of the country’s citizens.”⁹⁶

However, she adds that “the allusion would be familiar to the white, educated, and, especially, Christian voter is indisputable. More questionable is whether it would be recognized by the disenfranchised as a positive sign of the change envisioned by the Democratic Party. The Puritans’ hill is not Martin Luther King Jr.’s Mountaintop;⁹⁷ Beacon Hill may be a distinctly American location, but it is no Mount Pisgah⁹⁸.”⁹⁹

⁹⁵ Hammer, op. cit., p. 272.

⁹⁶ Söderlind, op. cit. p. 2.

⁹⁷ Martin Luther King, Jr. *I've Been to the Mountaintop*. Mason Temple, Church of God in Christ Headquarters, Memphis, Tennessee, 3 April 1968.
<http://www.americanrhetoric.com/speeches/mlkivebeentothemountaintop.htm>

⁹⁸ One of the mountains of spiritual realm mentioned in the Bible.
www.guidedbiblestudies.com/topics/mount_pisgah.htm

Coe and Reitzes¹⁰⁰ classify these references, what they call “morality appeals” in a chart:

Morality appeals:	Language discussing:	Examples include:
Values	key American values	equality, fairness, freedom, liberty and justice
Religion	language discussing Judeo-Christian religious faith ¹⁰¹	God, Jesus, pray, scripture, and Torah
Patriotism	America’s mythic history including key figures and events	allegiance, constitution, flag, forefathers, and September 11
Family	Obama’s own family	Malia, Michelle, my grandmother, Sasha, and Obamas

1.5 Conclusion

Obama makes reference to specific values in his speeches about health care that belong to the American civil creed. For example, he refers to the Judeo-Christian religious faith when he finishes his speeches: “Thank you. God bless you and may God bless the United States of America.” We can also identify less explicit language but with a clear religious / mythical tinge as belonging to American exceptionalism when he claims, for instance, that the Supreme Court’s decision to declare the PPACA

⁹⁹ Söderlind, op. cit., p. 1.

¹⁰⁰ Kevin Coe and Michael Reitzes, *Obama on the Stump: Features and Determinants of a Rhetorical Approach*, *Presidential Studies Quarterly* 40, no. 3, University of Arizona, September, 2010, p. 398.

¹⁰¹ Obama’s rhetoric is at times religious: he finishes his speeches with “God bless America”; he says that he has prayed; that America is the land that deserves better health care for all its people.

constitutional entails that “they've reaffirmed a fundamental principle that here in America -- in the wealthiest nation on Earth – no illness or accident should lead to any family's financial ruin.”¹⁰² A different matter is whether the fact that more than 40 million Americans remain to date uninsured proves that the latter principle though affirmed in the past was never actually implemented until the PPACA was passed.

¹⁰² Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room. 28th June 2012. 12:15 P.M. EDT.

2 Health Care in the United States

“... America will remain a place where each of us is free to choose our own destiny and make of our lives what we will. Now, for most families, that freedom requires a job that pays the bills, covers your mortgage, helps you look after your children. It means a chance to send those children to college, save enough for retirement. And it means access to quality, affordable health care. That is part of the American Dream. Health as part of the American Dream.”¹⁰³

Barack Obama at the Families USA Conference, 2011.

2.1 Introduction: Purpose of Description

A description of the situation of health care in America serves to contextualize the need for reform, the PPACA and the use of American exceptionalism in the speeches. It makes sense to explain the situation of health care in the United States and why so many administrations before the current one have felt the need to reform it.

¹⁰³ Obama delivers remarks on the economy and health care at Families USA conference. Washington, D. C. January 28, 2011.

2.2 Number of Uninsured Americans

A common way of starting a discursive study of health care in America is by using different references to statistics on the number of uninsured Americans:

- a. "In 2008, over 46 million Americans¹⁰⁴ were uninsured and millions more have lost their health coverage as a result of the recent economic downturn. Another 25 million people are uninsured, with coverage that is insufficient to protect against the cost of a major illness."¹⁰⁵
- b. "Despite media attention and a litany of election-year debates over health care funding, some 45 million Americans remain without adequate health insurance."¹⁰⁶
- c. "Currently, there are 52 million people without health insurance, and 8.1 million of them are children."¹⁰⁷

¹⁰⁴ US Census Bureau. *Current Population Reports. Income, Poverty, and Health Insurance Coverage in the United States, 2008*, p. 20.
<http://www.census.gov/prod/2013pubs/p60-245.pdf>

¹⁰⁵ Senate Report 111-89. 111th Congress Report. *America's healthy future act of 2009*.

¹⁰⁶ Philip J. Fungiello, *Chronic Politics. Health Care Security from FDR to George W. Bush*, University Press of Kansas, Kansas, 2005.

¹⁰⁷ Pat Wechsler, "Americans Without Health insurance Rise to 52 Million on Job Loss Expense", *Bloomberg*, March 16, 2011, p. 151.
<http://www.bloomberg.com/news/2011-03-16/americans-without-health-insurance-rose-to-52-million-on-job-loss-expense.html>

- d. “Almost 60,000,000 Americans are uninsured, including patients whose pre-existing conditions [keep] them from acquiring affordable coverage and others who [are] dropped from plans after falling ill.”¹⁰⁸
- e. “There are 46 to 50 million uninsured people in this country, a number that threatens to rise to 54 million in the next few years. The current cost of such limited care is \$2.5 trillion per year, which equates to 60% of the gross domestic product, and continues to grow.”¹⁰⁹
- f. “A recent report by Harvard researchers report lack of health insurance is associated with 45,000 deaths a year in the United States.”¹¹⁰

Obama makes reference to these figures as well:

“But alongside these economic arguments, there is another, more powerful one. It is simply this: **We are not a nation** that accepts nearly 46 million uninsured men, women, and children. **We are not a nation** that lets hardworking families go without the coverage they deserve; or turns its back on those in need. **We are a nation** that

¹⁰⁸ Jan Odom-Forren, “Affordable Care Act: What Does the Supreme court Decision Mean?” *Journal of PeriAnesthesia Nursing*, vol. 27, no 4, August 2012.

¹⁰⁹ Jon C. George, “Health Care Reform Bill H. R. 3200 – America’s Affordable Health Choices Act”, *JACC: Cardiovascular Interventions*, American College of Cardiology Foundation, 2009.

¹¹⁰ Allison K. Hoffman, “Oil and Water: Mixing Individual Mandates, Fragmented Markets, and Health Reform”, *American Journal of Law & Medicine*, 36, 2010, p. 10.

cares for its citizens. We are a people who look out for one another.

That is what makes this the United States of America.”¹¹¹

The fact that the figure has amounted to such high number contradicts the statement that the United States is a nation that cares for its citizens. This fact, i.e. this apparent oblivion has been used by those in favour of reform as weaponry against those who claim the PPACA is aiming at harming the economy of the average Joe Doe.¹¹²

2.3 Negative Impact of Lack of Health Insurance on Public Health

Those in favour of health care reform provide abundant statistics to show the negative impact of the lack of health insurance on public health:

- a. “Countless studies have shown that those without health coverage generally experience worse health outcomes and poorer health compared to those who are insured. The uninsured are less likely to receive preventive care or even care for traumatic injuries, heart attacks, and chronic diseases. As a

¹¹¹ Obama’s Speech on Health Care Reform at the American Medical Association’s Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

¹¹² “Everyone at the end of the day thinks they’re going to pay money.” Frenkel Hasday in John Tozzi, “Getting a Grip on Obamacare”, *Bloomberg Businessweek*, April 8-14, 2003, p. 27.

result, 23 percent forgo necessary care every year due to cost, while 22,000 uninsured adults die prematurely each year as a result of lacking access to care.”¹¹³

- b. In the same sense: “Being uninsured can adversely affect an individual’s health. The uninsured have a higher premature mortality rate than people with health insurance. They are less likely to receive preventative care and more likely to postpone seeking treatment for an illness than the insured. As a result, their medical problems are more serious by the time they seek treatment, which they often receive in a hospital emergency room. The Institute of Medicine estimates that 20,000 uninsured Americans die each year because the lack of health insurance prevents timely and routine medical care.”¹¹⁴
- c. “Under our current system millions of Americans are being harmed by the lack of health insurance, thus they have no access to routine medical care. Moreover, those who currently have insurance are being impacted by escalating health care costs that are causing employers to shift more of the financial burden to employees.”¹¹⁵
- d. According to a 2009 review of the literature by the Institute of Medicine,¹¹⁶ children with health insurance have “fewer avoidable

¹¹³ Report to Accompany S. 1796, America's Healthy Future Act of 2009.

¹¹⁴ Ryan C. Patterson, “‘Are you serious?’: Examining the Constitutionality of an Individual Mandate for Health Insurance”, *Notre Dame Law Review*, vol. 85, 2009 – 2010, p. 2007.

¹¹⁵ Odom-Forren, *Affordable Care Act*, 2012, op. cit.

hospitalization, improved asthma outcomes, and fewer missed days of school.” Adults without health insurance suffer “poorer health outcomes, greater limitations in quality of life, and premature death...”

2.4 High Price of Health care

The lack of universal health insurance is worsened by the high price¹¹⁷ of an “unreformed” health care system:

- a. “The United States spends the highest percentage of its gross domestic product on health care of any ‘developed’ country, yet as of 2009, 46.9 million individuals either had no adequate health-insurance and therefore did not have access to health care. This is just not right.”¹¹⁸
- b. “The health care industry is about \$800 billion in the United States economy. They’re more attracted to shift work, so they don’t have to worry about patients after they leave.”¹¹⁹

¹¹⁶ Institute of Medicine, “America’s Uninsured Crisis: Consequences for Health and Health Care”, National Academics Press, Washington, D. C., 2009.
<http://www.iom.edu/Reports/2009/Americas-Uninsured-Crisis-Consequences-for-Health-and-Health-Care.aspx>

¹¹⁷ This is further analysed in the section on the need to reform health care.

¹¹⁸ David M. Pariser, “Ethical considerations in health care reform: Pros and cons of the Affordable Care Act”, *Elsevier*, 2012.

¹¹⁹ Erwin Chemerinsky, “A Defense of the Constitutionality of the Individual Mandate”, *Mercer Law Review*, vol. 62, 2010- 2011.

- c. “The U.S. health care system is in the midst of a ferocious war. The prize is unimaginably huge - \$2 trillion, about the size of the economy of China- and the outcome will affect the health and welfare of hundreds of millions of people.”¹²⁰
- d. “The United States economy loses \$270 billion annually because of the poorer health and shorter lifespan of the uninsured.”¹²¹

2.5 How Does the U.S. Compare to Other Countries?

Lipset, the father of “modern” American exceptionalism, considers that a thorough study of American exceptionalism requires a comparison with other nations.¹²² Lipset and other scholars compare the United States to other countries in order to analyse how each country fares in terms of health care.

2.5.1 Life Expectancy

How does one judge the overall success of a nation’s health care system? The single most important measure, surely, is **life expectancy**. According to the WHO,¹²³ in terms of “disability-linked life-expectancy,” the

¹²⁰ Regina Herzlinger, *Who Killed Health Care*, London: McGraw-Hill, 2007, p. 1.

¹²¹ Charles D. Bakder, Arthur Caplan and others, “Health of the Nation – Coverage for All Americans”, *The New England Journal of Medicine, Perspective*, August 21, 2008, p. 272.

¹²² Lipset, op. cit., p. 34.

¹²³ *World Health Statistics*. World Health Organization. 2011.

United States comes twenty-fourth out of the twenty-five high-income countries in the OECD. Data is from 2011.

Out of the 198 nations and territories listed in the **World Health Organization** (2011) the United States ranks thirty-third in life expectancy: 79 years, just surpassing Cuba (78). The category of human beings in the world with the longest life expectancy as of 2010 were Japanese women, who could expect to live to well past 83. Italians, French, Spaniards, Swedes and Swiss could count on more than 80 years of life. The British, in twenty-seventh place, had a life expectancy of 80 years.

2.5.2 Level of Child Mortality - Under-5 (per 1,000 live births)

Another important overall statistical measure of a health care system's success is the **level of child mortality**. In the United States, as of 2011, eight children out of every thousand died before the age of five. Thirty-three countries or territories in the world do better than that. In Norway, Singapore and Sweden only three children out of every thousand die before age five; four in Denmark, France, Italy and Spain; five in Australia and the UK.¹²⁴

http://www.who.int/whosis/whostat/EN_WHS2011_Full.pdf

¹²⁴ Data from the World Bank: <http://data.worldbank.org/indicator/SH.DYN.MORT>. 2008 – 2012.

2.5.3 Health Care Spending

“The average American spends nearly \$6,000 annually on medical care, including what is paid by insurance and out of pocket. That works out to about 15 percent of GDP –roughly one in every seven dollars. The next highest-spending country, Switzerland, allots only 11.5 percent of GDP to medical care, about 3,800 per person in U.S. dollars. The United Kingdom is at the low end of the spectrum; until very recently, it spent only half what the United States did as a share of GDP, even lower in dollar terms. The United Kingdom has recently concluded that it was spending too little on health care and is increasing its spending to the average of other member nations of the OECD. Across the developed countries as a whole, OECD data show that **average per person spending is about \$2,300,** roughly 9 percent of GDP.”¹²⁵

The average American spends more than three times the average person in the OECD but the results are not as rewarding.

2.5.3.1 Public Sector Share of Medical Spending

From all these statistics, Cutler and Keenan conclude that “while medical spending as a whole is higher in the United States than elsewhere,

¹²⁵ Cutler and Keenan in Peter H. Schuck and James Q. Wilson, op. cit., p. 451.

the public sector share of medical spending is much lower.

Government accounts for about three-quarters of medical spending in the average OECD country; in the United States, government spending is only 44 percent of total spending. Ironically, the high rate of total spending offsets the low public share, so that government spending on medical care is roughly the same in the United States as elsewhere.”¹²⁶

2.6 Conclusion: Poor Job

The general opinion among scholars is that despite being “the wealthiest nation on earth”¹²⁷ the United States lags behind other countries since it has done a poor job of equally distributing health benefits; in effect, there is no real distribution as such.¹²⁸ The following two excerpts are self-explanatory:

“If we have the world’s best health care system, it follows that we would have the world’s best health care outcomes. We don’t! We

¹²⁶ Pariser, op. cit., p. 451.

¹²⁷ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room, June 28th, 2012, 12:15 P.M. EDT

¹²⁸ “Europeans often libel America as being a country where poor people are left to die in the lobbies of hospitals because they don’t have any credit cards; in fact there is a public system, Medicaid, precisely for such emergencies. All the same, America is the only rich country without a national health service or a system of free child support, and some 44 million Americans lack health insurance.” John Micklethwait and Adrian Wooldridge, *The Right Nation. Why America is Different*, Penguin, London, 2005, p. 305.

lag behind other industrial nations in life expectancy, infant mortality, maternal mortality, and immunization rates.”¹²⁹

“Despite the medical miracles we have developed, the United States has done a poor job of making even routine medical care available to its population. Millions of Americans forego preventive care and treatment for common chronic conditions such as asthma, diabetes, and hypertension because they simply cannot afford it. As a result, the United States ranks dead last among industrialized nations in overall health.”¹³⁰

¹²⁹ J. E. Dalen, “Should the Affordable Care Act of 2010 Be Repealed?” *The American Journal of Medicine*, vol. 124, number 7, 2011, p. 575.

¹³⁰ Huhn, op. cit., p. 300.

3 The Need to Reform

And after a long and tough fight, we succeeded -- yes, we did -- in passing health care reform. Thanks to you. And that reform will make a positive difference in the lives of the American people.

*Remarks by the President to the American Nurses association,
June 16th, 2010.*

But know this: I will not waste time with those who have made the calculation that it's better politics to kill this plan than to improve it. I won't stand by while the special interests use the same old tactics to keep things exactly the way they are. If you misrepresent what's in this plan, we will call you out. And I will not... And I will not accept the *status quo* as a solution. Not this time; not now. Everyone in this room knows what will happen if we do nothing. Our deficit will grow. More families will go bankrupt. More businesses will close. More Americans will lose their coverage when they are sick and need it the most. And more will die as a result. We know these things to be true.

*President Obama's speech to Congress on the need to
overhaul health care. September 9th, 2009.*

3.1 Introduction

Having described the situation of health care in America, the next step is to examine what the options are – whether to maintain the *status quo* or to reform; if the decision is to reform, then it is necessary to explore the model that the current administration eventually opted for to carry out reform, i.e. universal coverage. Moreover, this chapter examines the reasons why reform has failed in the past.

3.2 Is There a Real Need for Reform? Assessment of the American Health Care System

3.2.1 Reform is Necessary

As we have seen in the previous chapter, by relying on statistical facts the conclusion among academia is that **reform is a must**: “In the face of escalating costs, uneven quality of care, and the growth of the uninsured population, there is broad agreement that **the U.S. health-care system requires reform.**”¹³¹ “The need for health care reform is evident and irrefutable and has been proposed since the early 1990s.”¹³²

¹³¹ Oberlander, op. cit., p. 781.

¹³² George, op. cit., p. 2009.

There is indeed common consensus on the need to reform.¹³³ Even those against the PPACA¹³⁴ agree on the need to reform health care since **the current system is unsustainable**:

- a. "The rising cost of health care and the number of Americans without health insurance are two of the main concerns that drove **the push for health care reform**. [...] The quality of health care is also a driving factor."¹³⁵
- b. "Widespread state budget gaps, increasing unemployment, low rates of health care utilisation, and increased pressures on provider and institutional revenue streams have all converged to force **the transformation of health care**."¹³⁶
- c. "When you have patients with every garden variety conditions that require certain kinds of garden variety interventions, and the patients can't afford them, the dilemma for a physician is: Do I even start to counsel patients on the kinds of treatment options I would recommend? Because **this patient doesn't have any of these choices**."¹³⁷

¹³³ "A poll released in mid-August 2008 found more than 80% of those surveyed think the nation's health care system needs fundamental change." Les Lang, "Healthcare Reform: Obama vs. McCain", *Gastroenterology and Hepatology News*, 2008.

¹³⁴ PPACA has been described as a "gargantuan health care overhaul." Maximilian Held, "Go Forth and Sin [Tax] No More: Important Tax Provisions, and their Hazards, in the Patient Protection and Affordable Care Act", *Gonzaga Law Review*, vol 46, 2010 – 2011, p. 718.

¹³⁵ Patterson, op. cit. p. 2005.

¹³⁶ Marcus, op. cit., p. 927.

- d. "Our health care system as a whole has not been working as efficiently as it could. **Health care reform in the form of PPACA** may not be perfect – in fact it may be far from perfect- **but it was time for a change.**"¹³⁸

Obama makes reference to the costs for the individual, families, employers, entrepreneurs and the economy in general to justify why it's high time to carry out reform. Reform is paramount as a means **to stop the escalating costs:**

- "Then there's the problem of rising costs. We spend one-and-a-half times more per person on health care than any other country, but we aren't any healthier for it. This is one of the reasons that insurance premiums have gone up three times faster than wages. **It's why** so many **employers**, especially small businesses, are forcing their employers -- **employees** to pay more for insurance, or are dropping their coverage entirely. **It's why** so many **aspiring entrepreneurs** cannot afford to open a business in the first place, and why American businesses that compete internationally, like our automakers,¹³⁹ are at a huge disadvantage. And **it's why** those of us with health insurance are also paying a hidden and growing tax for those without it [uninsured and free lancers], about \$1,000 per

¹³⁷ Sarah Rosenbaum in *Charles D. Baker*, loc. cit.

¹³⁸ LouAnne Drenckhahn in Kalish, Brian M., loc. cit.

¹³⁹ General Motors, Chrysler and Ford.

year that pays for somebody else's emergency room and charitable care.”¹⁴⁰

- “We also know that one essential step on our journey is to control **the spiraling cost of health care in America**. Today, we are spending over \$2 trillion a year on health care – almost 50 percent more per person than the next most costly nation.”¹⁴¹
- “Today we are surrounded by medical miracles –we can view inside the body, perform micro- and robotic surgery, and treat patients not only with traditional pharmaceuticals, but with biologic and genetic agents. We can cure cancer- we can replace diseased and worn-out organs- we can stave off death with machines that breathe for us and circulate our blood. [...] But all this comes at a price. **The average cost of one day in a regular hospital room is over \$1,100.** [...] The aging of the American population – the rising ratio of the elderly to the workforce – increases the average cost of medical care while reducing our ability to pay for it. Individual initiative and charitable activity can no longer guarantee access to medical treatment. If we are to achieve universal access to medical care it will have to be accomplished through law –through mandates, taxes, and governmental benefits programs.”¹⁴²

¹⁴⁰ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

¹⁴¹ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15, 2009.

¹⁴² Huhn, op. cit., p. 308.

- “Part of the challenge for **families** was, is that even as their wages and incomes were flatlining, their costs of everything from college tuition to health care were skyrocketing. And so what we realized was we had to take some steps to start dealing with these underlying chronic problems that have confronted **our economy** for a very long time. And health care was one of those issues that we could no longer ignore. We couldn't ignore it because **the cost of health care has been escalating faster than just about anything else**, and I don't need to tell you all that. **Even if you** have health insurance, you've seen your copayments and your premiums skyrocket. **Even if you** get health care from your **employer**, that employer's costs have skyrocketed and they're starting to pass more and more of those costs onto their employees. More people don't get health care from their employers. And in addition, what you were seeing was that at the state level and at the federal level, the costs of health care, because people weren't getting it on the job and were trying to get it through the CHIP program or Medicaid or disability or what have you -- all those costs were driving **our government** bankrupt. Anybody who's out there who's concerned about the deficit, the single biggest driver of our deficit is the ever escalating cost of health care. So it was bankrupting **families, companies**, and **our government**. So we said we had to take this on.”¹⁴³

¹⁴³ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

- “Finally, our health care system is placing an unsustainable burden on **taxpayers**. When health care costs grow at the rate they have, it puts greater pressure on programs like Medicare and Medicaid. If we do nothing to slow these **skyrocketing costs**, we will eventually be spending more on Medicare and Medicaid than every other government program combined.”¹⁴⁴

He also examines the **costs of health care in relation to the economy** to appease the opposing voices:

“Make no mistake: **the cost of our health care is a threat to our economy**. It is an escalating burden on our families and businesses. It is a ticking time-bomb for the federal budget. And it is unsustainable for the United States of America. [...] Now, even if we accept all of the economic and moral reasons for providing affordable coverage to all Americans, there is no denying that it will come at a cost – at least in the short run. But it is a cost that will not – I repeat, not – add to our deficits. Health care reform must be and will be deficit neutral in the next decade.”¹⁴⁵

¹⁴⁴ Obama’s Health Care Speech to Congress. September 9th, 2009.

¹⁴⁵ Obama’s Speech on Health Care Reform at the American Medical Association’s Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

Again: “Put simply, our health care problem is our deficit problem. Nothing else even comes close. Nothing else.”¹⁴⁶

Galvin expresses the view of the **business sector**: “I think business is as willing to get out what it's doing now as it's been since I remember. Even more than that in the early 90s, simply because **the costs continue to compound**. So unless Congress can work together on access and cost at the same time, it's going to be difficult to sway the business community into believing what's on the other side is not going to be worse than [what we have] today.”¹⁴⁷ Lockhart is hesitant: “given the persistent stubborn cultural (individualistic) and self-interested (business) resistance to reducing health-care costs, it is not credible to imagine that the ACA will help the United States reduce medical-care expenses as a percentage of GDP.”¹⁴⁸

Naturally, given the circumstances, Obama agrees 100% with pundits on the need to reform; this is made obvious in his speeches; failure to act will negatively affect all of the American people:

- “When it comes to the cost of our health care, then, the *status quo* is unsustainable. **Reform is not a luxury, but a necessity.** I know there has been much discussion about what reform would cost, and rightly so. This is a test of whether we – Democrats and Republicans alike – are serious about holding the line on new spending and restoring fiscal discipline. But let

¹⁴⁶ Obama’s Health Care Speech to Congress. September 9th, 2009.

¹⁴⁷ Robert Galvin. *Health of the Nation — Coverage for All Americans*
investorshub.advn.com/boards/read_msg.aspx?message_id=31610855

¹⁴⁸ Lockhart, op. cit., p. 206.

there be no doubt – the cost of inaction is greater. **If we fail to act**, premiums will climb higher, benefits will erode further, and the rolls of uninsured will swell to include millions more Americans. **If we fail to act**, one out of every five dollars we earn will be spent on health care within a decade. In thirty years, it will be about one out of every three – a trend that will mean lost jobs, lower take-home pay, shuttered businesses, and a lower standard of living **for all Americans**. And **if we fail to act**, federal spending on Medicaid and Medicare will grow over the coming decades by an amount almost equal to the amount our government currently spends on our nation's defense. In fact, it will eventually grow larger than what our government spends on anything else today. It's a scenario that will swamp our federal and state budgets, and impose a vicious choice of either unprecedented tax hikes, overwhelming deficits, or drastic cuts in our federal and state budgets. To say it as plainly as I can, **health care reform is the single most important thing we can do for America's long-term fiscal health. That is a fact.**"¹⁴⁹

- "With today's vote, we are now incredibly close to **making health insurance reform a reality** in this country. Our challenge, then, is to finish the job. **We can't doom another generation of Americans to soaring costs and eroding**

¹⁴⁹ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

coverage and exploding deficits. Instead we need to do what we were sent here to do and improve the lives of the people we serve. For the sake of our citizens, our economy, and our future, let's make 2010 the year we finally reform health care in the United States of America."¹⁵⁰

The PPACA aims at mending this situation: "This legislation will also lower costs for families and for businesses and for the federal government, **reducing our deficit** by over \$1 trillion in the next two decades. It is paid for. It is fiscally responsible. And it will help lift a decades-long drag on our economy. That's part of what all of you together worked on and made happen."¹⁵¹

Pariser however, argues that such neutrality is not entirely real:

"Although the proponents of ACA tout the fact that it would not add to the federal deficit during the first 10 years, this **revenue neutrality** is only accomplished by beginning to collect revenue after three years before the full implementation of expenditures. The ongoing costs of ACA must be considered in the larger context of the burgeoning federal debt, as the current Medicare and Medicaid programmes are as significant portion of the mounting budget deficits. Removing or lessening the entrepreneurial

¹⁵⁰ Remarks by the President on Senate Passage of Health Insurance Reform. State Dining Room. Washinton, D.C. December 24, 2009. 8:47 A.M. Est.

¹⁵¹ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. Edt.

incentives from providers will not reward true efficiencies of care and will stifle innovation of new drugs, devices, and therapies.”¹⁵²

This view is shared by the Republican party. The conservative view is that Obamacare is going to increase both costs and the already humongous deficit. Besides, the GOP holds the need to refrain from increasing costs an important economic principle not to be neglected. The Democrat party is more inclined to break this principle when there are other, more socially-oriented principles at stake.

Obama details the **source of income to cover the price of reform**:

- “That said, let me explain **how we will cover the price tag**. First, as part of the budget that was passed a few months ago, we've put aside \$635 billion over ten years in what we are calling a Health Reserve Fund. Over half of that amount – more than \$300 billion – will come from raising revenue by doing things like modestly limiting the tax deductions the wealthiest Americans can take to the same level it was at the end of the Reagan years. Some are concerned this will dramatically reduce charitable giving, but statistics show

¹⁵² David M. Pariser, “Ethical considerations in health care reform: Pros and cons of the Affordable Care Act”, *Elsevier*, 2012.

that's not true, and the best thing for our charities is the stronger economy that we will build with health care reform.”¹⁵³

- “Finally, let me discuss an issue that is a great concern to me, to members of this chamber, and to the public, and that's **how we pay for this plan**. Now, here's what you need to know. **First, I will not sign a plan that adds one dime to our deficits**, either now or in the future. I will not sign it if it adds one dime to the deficit now or in the future. Period. And to prove that I'm serious, there will be a provision in this plan that requires us to come forward with more spending cuts if the savings we promise don't materialize. Now, part of the reason I faced a trillion-dollar deficit when I walked in the door of the White House is because too many initiatives over the last decade were not paid for, from the Iraq war to tax breaks for the wealthy. I will not make that same mistake with health care. **Second**, we've estimated that **most of this plan can be paid for by finding savings within the existing health care system**, a system that is currently full of waste and abuse. Right now, too much of the hard-earned savings and tax dollars we spend on health care don't make us any healthier. That's not my judgment. It's the judgment of medical professionals across this country.”¹⁵⁴

He also estimates **the total cost of reform**:

¹⁵³ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

¹⁵⁴ Remarks by the President To a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

- “There are already voices saying the numbers don't add up. They are wrong. Here's why. **Making health care affordable for all Americans will cost somewhere on the order of one trillion dollars over the next ten years.** That sounds like a lot of money – and it is. But remember: it is less than we are projected to spend on the war in Iraq. And also remember: failing to reform our health care system in a way that genuinely reduces cost growth will cost us trillions of dollars more in lost economic growth and lower wages.”¹⁵⁵
- “And that's why we feel pretty confident that over the long term, as a consequence of the Affordable Care Act, premiums **are going to be lower** than they would be otherwise; health care costs overall **are going to be lower** than they would be otherwise. And that means, by the way, that the deficit **is going to be lower** than it would be otherwise. Understand -- I want to make sure everybody is clear. The Congressional Budget Office, which is made -- is independent, it's historically bipartisan; this is sort of the scorekeeper in Washington about what things costs -- says that as a consequence of this act [i.e. the PPACA], the deficit is going to be over a trillion dollars lower over the course of the next two decades than it would be if this wasn't passed.”¹⁵⁶

¹⁵⁵ Ibid.

¹⁵⁶ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

Pariser highlights that controlling costs comes with a **change of mentality** since “the consumers of health care, the patients, and the providers of health care have no incentive to control **costs**, in fact, both of these groups have incentive to request and provide more services.” And to make it happen “we need **to turn down the political rhetoric and take after reform seriously**. It's time to organise discussion groups with expert panels made of health care providers and health administrators and then we need to urge the public to participate in this discussion groups and form a consensus about which services should be provided and to whom. Only then we will be able to untangle this costly and ridiculous mess of our health care system.”¹⁵⁷

A good example of the “costly and ridiculous mess” is that of Medicare, yet “another issue that's been subjected to demagoguery and distortion during the course of this debate.”¹⁵⁸ Those most benefiting from the system, i.e. insurance companies should be paying for the costs:

“The only thing this plan would eliminate is the **hundreds of billions of dollars in waste and fraud**, as well as **unwarranted subsidies in Medicare that go to insurance companies...** subsidies that do everything to pad their profits, but don't improve the care of seniors. Now, these steps will ensure that you -- America's seniors -- get the benefits you've been promised. They

¹⁵⁷ James Fieseher and Thomas Clairmont, “Affordable Care Act just scratches the surface: we need to turn down the political rhetoric and take health care reform seriously”, *New Hampshire Business Review*, July 13, 2012.

¹⁵⁸ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

will ensure that Medicare is there for future generations. And we can use some of the savings to fill the gap in coverage that forces too many seniors to pay thousands of dollars a year out of their own pockets for prescription drugs. That's what this plan will do for you. [...] Much of the rest would be paid for with **revenues from the very same drug and insurance companies that stand to benefit from tens of millions of new customers**. And **this reform will charge insurance companies a fee for their most expensive policies**, which will encourage them to provide greater value for the money -- an idea which has the support of Democratic and Republican experts. And according to these same experts, this modest change could help hold down the cost of health care for all of us in the long run.”¹⁵⁹

Another key principle of the reform of Medicare is **to improve efficiency of the existing structures**:

“Medicare is such a big part of the health care system, **making the program more efficient** can help usher in changes in the way we deliver health care that can reduce costs for everybody. We have long known that some places, like the Intermountain Health care in Utah or the Geisinger Health System in rural Pennsylvania, offer high-quality care at costs below average. So the commission can help encourage the adoption of these common-sense best

¹⁵⁹ Ibid.

practices by doctors and medical professionals throughout the system -- everything from reducing hospital infection rates to encouraging better coordination between teams of doctors. Reducing the waste and inefficiency in Medicare and Medicaid will pay for most of this plan.”¹⁶⁰

In this sense, the PPACA envisages the creation of an **innovation centre** “within the Centres for Medicare and Medicaid services to test innovative payment and service delivery models to reduce health care costs and enhance quality of care. This agency is aimed at slowing the rapid rise of health care costs.”¹⁶¹

Obama makes reference to this centre: “And we will also create an **independent commission of doctors and medical experts** charged with identifying more waste in the years ahead.”¹⁶²

3.2.2 Reform is Not Necessary

The need to reform is denied and challenged by conservatives who will rather keep cherishing **the belief in the superiority of American medicine**. This has always been a “proverbial matter”¹⁶³ for Americans in general; “their health care is the finest in the world” because “they ate better

¹⁶⁰ Ibid.

¹⁶¹ Odom-Forren, op. cit., 2011.

¹⁶² President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

¹⁶³ Hodgson, op. cit., p. 137.

–they were sure– they were healthier, they lived longer, and you could always tell an American by the shining quality of this teeth. If they did fall ill, it was taken for granted, then American doctors would cure them with the technological virtuosity of American surgery, American wonder drugs, and the superbly antiseptic magic of American hospitals.”¹⁶⁴

When this matter was being discussed some continued to believe despite statistical evidence to the contrary in the pre-eminence of American medicine:

“They have been convinced, by patient and skilful campaigns of public relations over several generations, not only that the skill and practice of American medicine are superior, but that the system, the essentially commercial **fee-for-service system**, as modified by the insurance industry and health-maintenance organizations, is intrinsically more efficient. They have been taught that any form of universal health insurance or health care provision (often tendentiously described as ‘**socialized medicine**’) is necessarily inferior.”¹⁶⁵

3.3 Reforming

Democrats and Republicans remained sharply divided over how to reform health care, as evidenced by the health care plans offered by the

¹⁶⁴ Ibid., p. 138.

¹⁶⁵ Loc. cit.

parties' presidential candidates: "The ambitious reform agendas of Senators John McCain and Barack Obama will take the US health care system in very different directions."¹⁶⁶

Republicans focused on how Obamacare, as it was derisively called before the President said "he liked it,"¹⁶⁷ would spike both taxes and the deficit. Obama presents either position in this speech:

"Now, these are **the facts**. Nobody disputes them. We know we must reform this system. The question is how. Now, there are those on the left who believe that the only way to fix the system is through a **single-payer system**¹⁶⁸ like Canada's, where we would -- where we would severely restrict the private insurance market and have the government provide coverage for everybody. On the right, there are those who argue that we should end **employer-based systems** and leave individuals to buy health insurance on their own. I have said -- I have to say that there are arguments to be made for both these approaches. But either one would represent a radical shift that would disrupt the health care most people currently have. Since health care represents **one-sixth of our economy**, I believe it

¹⁶⁶ Oberlander, op. cit., p. 781.

¹⁶⁷ First Presidential Debate (Obama – Romney), Magness Arena at the University of Denver in Denver, Colorado, October 3rd, 2012.

¹⁶⁸ "In order to provide universal health coverage, single payer systems use a unified public payer [...] to pay the bills for people's health costs, rather than processing payments through a patchwork of private insurers." Lawrence and Skocpol, op. cit. 189.

makes more sense **to build on what works** and fix what doesn't, rather than try to build an entirely new system from scratch."¹⁶⁹

He also gives the following appraisal of his own reform: "So this isn't radical reform. But it is major reform. This legislation will not fix everything that ails our health care system. But it moves us decisively in the right direction. This is what **change** looks like."¹⁷⁰

It is not radical since it is aware of the political situation and works from there; but it is major since it aims at reforming none other than the health care policy. Mettler rightly points out that "the president confronted an established and complex policy thicket that presented tremendous challenges to reform. In contrast to presidents such as Franklin D. Roosevelt and Lyndon B. Johnson, Obama did not aim to create major new direct and visible government social programs. Neither did he seek to terminate or dramatically alter such programmes, as Ronald Reagan, who told the nation, 'Government is not the solution to our problem; government is the problem,' or Bill Clinton, who vowed to 'end welfare as we know it'."¹⁷¹

¹⁶⁹ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

¹⁷⁰ Obama Makes Remarks after House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21st, 2010.

¹⁷¹ Suzanne Mettler, "Reconstituting the Submerged State" in *Obama at the Crossroads*, edited by Lawrence R. Jacobs and Desmond King, OUP, Oxford, 2012, p. 72.

3.4 Universal Coverage

The most relevant change envisaged by the PPACA is the establishment of universal coverage. It's a key goal of the law. It's at the core of reform. It is paramount given the number of people it affects (it's universal) and because it reverses a tradition of private procurement of health care.

Some have even argued that the inexistence of universal coverage shows a dark side¹⁷² of American exceptionalism since the United States has been lagging behind its counterparts in creating a system to provide solid health security to its citizens despite the many efforts by Obama's predecessors:

“Ever since the Truman administration first proposed health care reform, powerful interests have supported relentless and often disingenuous ideological attacks on the sort of universal health care provision that all developed countries except the United States have provided for generations. [...] Defenders of American medicine love to confuse the argument by generalizing about ‘Europe,’ diluting the higher standards of Scandinavia and Western Europe with the generally poorer performance of countries in Eastern Europe.” “It is difficult to make an ironclad case that any one system is better than another but ... the fact that **countries with universal health care routinely outperform the United States** on many fronts- and that,

¹⁷² “Health care, in short, is a classic instance of negative exceptionalism.” Hodgson, op. cit., p. 140.

overall, their citizens end up healthier- ought to be enough, and least, to discredit the argument that universal care leads to worse care.”¹⁷³

Nobel-prize winner Krugman talks about an “unacceptable case of American exceptionalism”:

“[...] the plight of Americans who suffer from pre-existing medical conditions. In other advanced countries, everyone gets essential care whatever their medical history. But in America, a bout of cancer, an inherited genetic disorder, or even, in some states, having been a victim of domestic violence can make you uninsurable, and thus make adequate health care unaffordable. One of the great virtues of the Democratic plan is that it would finally put an end to this unacceptable case of American exceptionalism.”¹⁷⁴

3.4.1 Failed Past Attempts to Attain Universal Coverage

Experts agree on the extreme difficulty of implementing a system of universal coverage in the United States:

¹⁷³ David Cohn, “Health Care Like the Europeans Do It”, *New Republic*, 10 April 2007.

¹⁷⁴ Paul Krugman, “Afflicting the Afflicted”, *The New York Times*, February 25, 2010.

- “**Significant efforts** to enact **universal health insurance** were mounted (with each attempt at reform).”¹⁷⁵
- “**Contentious efforts** at health reform seeking **universal coverage** have been witnessed throughout 20th Century politics;”¹⁷⁶
- “Across the entire span of the twentieth century, **all attempts** to enact a health care reform plan that would **guarantee universal coverage have been defeated.**”¹⁷⁷
- “The history of health reform in the United States has been marked by **multiple failed attempts** to create national health insurance programmes dating back at least to President Theodore Roosevelt’s¹⁷⁸ presidency;”¹⁷⁹
- “History shows us that political officials have had an extremely difficult time bringing a national health insurance programme to the American people.”¹⁸⁰

¹⁷⁵ Gable, op. cit., p. 342.

¹⁷⁶ Hoffman, *Oil and Water*, op. cit., p. 8.

¹⁷⁷ Quadagno, op. cit., p. 201.

¹⁷⁸ “I am not the first president to take up this cause, but I am determined to be the last. It has now been nearly a century since Theodore Roosevelt first called for health care reform. And ever since, nearly every president and Congress, whether Democrat or Republican, has attempted to meet this challenge in some way. A bill for comprehensive health reform was first introduced by John Dingell, Sr., in 1943. Sixty-five years later, his son continues to introduce that same bill at the beginning of each session.” Obama’s Health Care Speech to Congress. September 9th, 2009. Obama makes reference to John Dingell in his speech of March 13th, 2010.

¹⁷⁹ Gable, op. cit., p. 342.

¹⁸⁰ Odom-Forrer, op. cit., p. 2011.

The following chronological account from different scholars tracks the development of the idea of universal coverage and serves to show the struggle of those who fought for it in the United States:

1. “Efforts began in **the Progressive Era**, when the American Association for Labor Legislation introduced legislation [a failed bill], requiring insurance for all workers”¹⁸¹ with a view to “stimulating the first commercial insurance plans.”¹⁸² **“President Franklin Roosevelt** proposed national health insurance in 1934, but dropped it in response to resistance by medical professionals.
2. In **the post-World War II era**, **President Truman** rekindled the push for national insurance in 1945 “through a single-payer system that would extend health care to all Americans;”¹⁸³ it resulted in “Medicare and Medicaid under **President Johnson**¹⁸⁴ in 1965”¹⁸⁵ “to insure the poor and elderly, but was unable to secure a broader comprehensive government health insurance programme.”¹⁸⁶
3. In the 1970s there were numerous proposals from political officials for a national insurance plan; Nixon, Kennedy, etc.:¹⁸⁷ **“Nixon’s**

¹⁸¹ Hoffman, *Oil and Water*, op. cit., p. 8.

¹⁸² Quadagno, loc. cit.

¹⁸³ Odom-Forrer, op. cit., p. 2011.

¹⁸⁴ The following link describes the context when Medicare was passed among other things: [youtube.com/watch?v=nXVAOcs5oVA](https://www.youtube.com/watch?v=nXVAOcs5oVA)

¹⁸⁵ Hoffman, *Oil and Water*, op. cit., p. 8.

¹⁸⁶ Gable, op. cit., p. 342.

¹⁸⁷ Odom-Forrer, op. cit., p. 2011.

National Health Insurance Partnership Act of 1972 and **Kennedy's Health Care for All American's Act** led to federal support for private HMOs.”¹⁸⁸

4. The following decade saw a shift towards privatization of health care: “the defeat of Claude Pepper’s¹⁸⁹ home care bill in the 1980s spurred the development of private long-term care products.”¹⁹⁰
5. **The Clinton administration's Health Security plan** made a famous failed attempt at health reform in the 1990s:¹⁹¹ “the failure of President Clinton’s Health Security plan in the 1990s led to regulatory measures that shored up the private health insurance system and stimulated the purchase of long-term care products.”¹⁹²
“The start of the new century brought along the same issues in the US health care system.”¹⁹³
6. “[The presidential candidates’ health plans are] a political bromide – put out there so that if somebody says, ‘Do you have a position in

¹⁸⁸ Quadagno, op. cit., p. 201.

¹⁸⁹ Claude Pepper was a politician and a statesman who believed that the government had a responsibility to help those in need. Pepper served in the United States Senate from 1937 to 1951 and was a member of the House of Representatives from 1963 to 1989. Among his many accomplishments, he drafted the first bill to establish a minimum wage and maximum hours, introduced the first equal pay for equal work to women legislation, introduced legislation providing military aid known as Lend-Lease to Great Britain in World War II, held the first hearings on drugs in the schools, helped create the Juvenile Justice Agency, sponsored the Older Americans Act, ended mandatory retirement, and championed legislation to create the National Institutes of Health.
<http://www.claudepepperfoundation.org/about/507-2/>

¹⁹⁰ Loc. cit.

¹⁹¹ Hoffman, *Oil and Water*, op. cit., p. 8.

¹⁹² Quadagno, op. cit., p. 201.

¹⁹³ Odom-Forrer, op. cit., p. 2011.

health care coverage?’ the answer can be yes. [This applies to] the whole debate about health care in the U.S. for the past 20 or 30 years, with the possible exception of the **Medicare Modernisation Act**, where, whether you like it or not, the president¹⁹⁴ basically said, ‘I’m going to stick my presidency on this, and it will happen.’ And as a result, it did. That’s what you need a president to do if you’re going to get the coverage question resolved.”¹⁹⁵

The speeches refer to these numerous failed attempts. **Vice President Biden** put it this way: “But you know, Mr. President, you’ve done what generations of not just ordinary, but great men and women, have attempted to do. Republicans as well as Democrats, they’ve tried before. Everybody knows the story, starting with **Teddy Roosevelt**. They’ve tried. They were real bold leaders.”¹⁹⁶

Details of the story are provided by Obama:

“I’m signing this bill **for all the leaders** who took up this cause through the generations -- from Teddy Roosevelt to Franklin Roosevelt, from Harry Truman, to Lyndon Johnson, from Bill and Hillary Clinton, to one of the deans who’s been fighting this so long, John Dingell. To Senator Ted Kennedy. And it’s fitting that Ted’s

¹⁹⁴ i.e. President Bush.

¹⁹⁵ Odom-Forrer, loc. cit.

¹⁹⁶ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

widow, Vicki, is here; and his niece Caroline; his son Patrick, whose vote helped make this reform a reality.”¹⁹⁷

Obama mentions all his predecessors who tried to attempt reform:

“I understand that fear. I understand that cynicism. They are scars left over from past efforts at reform. Presidents have called for health care reform for nearly a century. Teddy Roosevelt called for it. Harry Truman called for it. Richard Nixon called for it. Jimmy Carter called for it. Bill Clinton called for it. But while significant individual reforms have been made – such as Medicare, Medicaid, and the children's health insurance program – efforts at comprehensive reform that covers everyone and brings down costs have largely failed.”¹⁹⁸

Quadagno relates these events to the **financing of health care**:

“the ironic outcome in each instance was federal action that entrenched a private alternative to a public programme. Even the enactment of Medicare in 1965 preserved a profitable market segment for private insurers in the form of supplemental ‘Medigap’ policies while removing a needy constituency, the aged, from debates over coverage for people for working

¹⁹⁷ Ibid.

¹⁹⁸ Obama’s Speech on Health Care Reform at the American Medical Association’s Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

age.”¹⁹⁹ The result, he concludes is that “the health care financing system that emerged over the past 100 years is **a patchwork of public and private programs** that provides some people with secure coverage but leaves others with sporadic periods of being uninsured and 45 million with no health insurance at all.”

The PPACA aims directly at correcting this situation – enough with the patchwork measures. Hence, Sebelius’s reference: “And there’s no question that it was history made by passing the most significant health-insurance reform since Medicare went into law 45 years ago.”²⁰⁰

3.4.2 Why Have Past Attempts Failed?

Obama provides a clear succinct summary of the reasons why reform has consistently failed:

- “Part of the reason is because **the different groups involved** – physicians, insurance companies, businesses, workers, and others – **simply couldn’t agree on the need for reform or what shape it would take.** And another part of the reason has been the **fierce opposition fueled by some interest groups and lobbyists** –

¹⁹⁹ Quadagno, op. cit., p. 201.

²⁰⁰ Obama’s Speech on Health Care Reform at the American Medical Association’s Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

opposition that has used fear tactics to paint any effort to achieve reform as an attempt to socialize medicine.”²⁰¹

- “Ever since **Teddy Roosevelt** first called for reform in 1912, seven Presidents -- Democrats and Republicans alike -- have taken up the cause of reform. Time and time again, such efforts have been blocked by **special interest lobbyists**²⁰² who’ve perpetuated a status quo that works better for the insurance industry than it does for the American people. But with passage of reform bills in both the House and the Senate, we are now finally poised to deliver on the promise of real, meaningful health insurance reform that will bring additional security and stability to the American people.”²⁰³

The Secretary in charge of the practicalities of implementing the PPACA (Kathleen Sebelius) makes reference to yet another reason:

“And in areas from energy, to education, to health care, we were paying a huge price for what were **years of underinvestment**. So in these challenging times, we have been incredibly fortunate to have a president who has been willing to make the hard choices and bold stands, not to just help us get out of **the "ditch we're in,"**

²⁰¹ Ibid.

²⁰² In describing Obama’s strategy, Lawrence and Skocpol accurately describe a certain kind of lobbyists: “In earlier and later big addresses on health care, Obama did what an eloquent president can do best: focus public attention on a priority, corral wandering and wavering DC politicians, and signal gritty determination to vulture-like lobbyists circling Washington. Op. cit. p. 54.

²⁰³ Remarks by the President on Senate Passage of Health Insurance Reform. State Dining Room. Washington, D.C. December 24th, 2009. 8:47 A.M. EST.

as he likes to say, but to make sure we emerge as **a stronger, healthier, fairer country** than we were before. Now, he's the leader who did more than anyone to help get the Affordable Care Act passed, who continues to make sure that we're implementing effectively, and who knows just how important it is to the **future productivity** of this country.”²⁰⁴

Obama continues highlighting how this reform is **a turning point in a history of failure**:

“Despite this long history of failure, I am standing here today because I think we are in a different time. One sign that things are different is that just this past week, the Senate passed a bill that will protect children from the dangers of smoking – a reform the AMA has long championed – and one that went nowhere when it was proposed a decade ago. What makes this moment different is that this time – **for the first time – key stakeholders are aligning not against, but in favor of reform**. They are coming together out of a recognition that while reform will take everyone in our health care community doing their part, ultimately, everyone will benefit. And I want to commend the AMA, in particular, for offering to do your part to curb costs and achieve reform. A few weeks ago, you joined together with hospitals, labor unions, insurers, medical device

²⁰⁴ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

manufacturers and drug companies to do something that would've been unthinkable just a few years ago – you promised to **work together to cut national health care spending by two trillion dollars over the next decade**, relative to what it would otherwise have been. That will bring down costs, that will bring down premiums, and that's exactly²⁰⁵ the kind of cooperation we need. So all -- all told, we expect that people's premiums should go down as much as 4 percent or 5 percent, over the long term. And, you know, that's a -- a -- a goal that I think can be achieved.”²⁰⁶

He goes on to say that the **spirit of staunch determination to reform should continue** till its full implementation: “But this is why it's going to be so important for us to sustain this health- reform effort over time. This is not sort of a -- a quick fix-it. This is something that is going to require a sustained, steady, dedicated effort. And that's something, certainly, I'm committed to, and Kathleen's²⁰⁷ committed to, and I hope all of you are committed to as well.”²⁰⁸

²⁰⁵ “Although the AMA signaled early on that it would oppose a government-sponsored insurance plan, in a dramatic reversal it lent its support. It even endorsed the House plan, complete with the ‘public option,’ of which it disapproved, because it has won several modifications it favoured within the Medicare payment reform plan.” Mettler, op. cit., p. 98.

²⁰⁶ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

²⁰⁷ Kathleen Sebelius, Secretary of Health.

²⁰⁸ Obama Holds Teleconference on the Affordable Care Act. September 21st, 2010.

3.5. Conclusion

This chapter proves that reform is necessary, that all possible options to carry it out were taken into consideration and that universal coverage was considered the most sound one. It analyses past reforms and shows how they all yielded to the staunch opposition from those that have been moving the ropes since the beginning of times, i.e. insurance companies. The PPACA seems to have managed to reverse this situation.

4 Theoretical Background for Reform

So I get a sense with some of these folks, it's just never going to be the right time. But the truth is, we have debated health care in Washington not just this past year, we've been debating it for 70 years. You know who was pushing health care reform? Harry Truman. Harry Truman was pushing health care reform. And by the way, you know what they said? They said, he's pushing socialized medicine. Harry Truman.

*St. Louis, Mo. Obama delivers remarks on health-care reform in
Missouri, March 10th, 2010.*

4.1 Introduction

Apart from the economic and social reasons explained in the previous chapter that clearly justify the need to reform the health care system in the United States, there is another type of reasons which underlie concepts of American exceptionalism: Obama makes constant reference to religion,²⁰⁹ and justifies the PPACA and the individual mandate in terms of the **moral need** to implement it, of the need to count with a **chart of rights**

²⁰⁹ The PPACA grants an exception in the application of the individual mandate to those with qualifying religious objections.

for patients²¹⁰ and to improve the **welfare of citizens**. Those against the PPACA not only use economic statistics but argue as well that the PPACA's all-encompassing measures are typical of **socialized medicine**, which entails that their implementation is completely unacceptable. Given the circumstances, President Obama opts for a pragmatic approach: without forgetting the ultimate moral goal he keeps veering his strategy to meet the goal of striking a deal with the opposing forces. The combination of the moral goal to pursue health care reform and the strategic disposition of the President has been described as craft ethics.

4.2 Socialized Medicine and the Welfare State

4.2.1 Concept

Socialized medicine refers to government-run programmes²¹¹ that “either provide medical care or distribute public funds for the purchase of medical care.”²¹² The most obvious examples of socialized medicine are Medicare and Medicaid;²¹³ the Veterans Administration;²¹⁴ public hospitals;²¹⁵ and the National Health Service Corps.²¹⁶

²¹⁰ See chapter 10.

²¹¹ All in all, “health care is substantially in the hands of private enterprise” in the United States. Huhn, op. cit., p. 305.

²¹² Ibid., p. 204.

²¹³ 46,560,767 Americans were enrolled in Medicare in 2009. Centers for Medicare and Medicaid Services, Medicare Enrollment: National Trends, 1966-2009, www.cms.gov.

At the end of the day, socialized medicine is the result of allowing the state to play a role in providing health care services. Giles Walt provides **an excellent summary of how this role has changed throughout history:**

“The state’s role **in many areas of economic management** expanded in both developed and developing countries, **between the Second World War and the late 1970s**. Guided by Keynesian ideas about employment, social welfare and industrial policy, most developed countries saw the state assume central responsibility for most public utilities and social services, including health. **In the U.K.**, for example, the National Health Service was created. **In Canada** universal access to health care was formalized. The private sector, where it existed, became heavily regulated through legal and economic controls. [...] **By the 1980s**, however, considerable disaffection with this extended role of the state had emerged. Global economic recession was entrenched, state administrations were increasingly criticized as being undemocratic, unresponsive and unaccountable [...] The contraction of the state

40 million Americans were covered by Medicaid in 2010. H.R. 3590 as Passed by the Senate, March 18, 2010, www.cbo.gov.

²¹⁴ VA served 5,143,461 veterans for health care services in 2008. Veterans Administration Office of Policy and Planning, www.va.gov.

²¹⁵ Public hospitals constitute over 12% of all hospitals in the United States as of 2011. National Association of Public Hospitals and Health Systems Research Brief, www.naph.org.

²¹⁶ “The NHSC has more than 7,500 clinicians and more than 10,000 sites... More than 7 million people receive health care from NHSC clinicians.” National Health Service Corps, April 2011, <http://nhsc.hrsa.gov>.

began in the USA and spread to other industrialized countries, then to developing countries. Publicly owned industries were sold, public expenditure reduced, and private industry deregulated. [...] Thus, **by the end of the 1980s**, governments throughout the world were reducing their responsibilities in the public sector, moving away from providing services directly while retaining regulatory and financial control. [...] **In the 90s** the state further relinquishes its role in many areas of public life, but governments continue to affect the lives of their citizens in many ways, ranging from the relatively trivial to the chillingly arbitrary...”

He concludes by **asserting the ensuing importance of the role of government:**

“[However], while contemporary wisdom has the state divesting itself of many of its functions in order to increase the role of market forces, the **reality is that in many countries government remains a major and direct actor in the society**. It is a major employer of labour, responsible not only for the bureaucratic apparatus of government, but also for many services including transportation, energy, education and health, as well as for some industrial production. Government determination to encourage the expansion of the private sector into new areas is itself a public policy of great significance. Even if current state services are taken over by the private sector, governments are likely to want to exercise their

authority to regulate, monitor or inspect private provision of those services. Public policy will remain of critical importance. Thus governments will continue to play a central role in policy making.”

Obama complains about the misuse of the term as part of a strategy to thwart his reform plan:

“That's what I've come to talk about today. We know the moment is right for health care reform. We know this is an historic opportunity we've never seen before and may not see again. But we also know that there are those who will try and scuttle this opportunity no matter what²¹⁷ – who will use the same scare tactics and fear-mongering that's worked in the past.²¹⁸ They'll give dire warnings

²¹⁷ “Using dramatic threats accompanied by a lot of public chest-thumping, the Republicans of the 112th Congress will see how often they can get President Obama and Congressional Democrats to cave in –see if they can push Democrats into making big cuts in programs vital to Democratic Party constituencies, such as Medicaid and Pell Grants. Republican leaders will also use the threat of derailing national economic recovery by refusing to pay U.S. obligations to try to get President Obama and Democratic leaders to sign on to right-wing ideological plans to eviscerate Social Security and Medicare – because if Democrats sign, that will enable GOP leaders to claim that such unpopular steps were taken in a ‘bipartisan’ way.”

Theda Skolpol and Vanessa Williams, *The Tea Party and the Remaking of Republican Conservatism*, Oxford University Press, Oxford, 2012, p. 177.

“The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain postbaccalaureate students to promote access to postsecondary education.”

United States Department of Education. www2.ed.gov/programs/fpg/index.html

²¹⁸ “Older Americans, for example, have been the demographic group most opposed to the Affordable Care Act of 2010, with many of them telling pollsters that they fear “death panels” or think that health reform for all Americans will result in sharp cuts to Medicare. Such fearful messages, aimed at the elderly, were pushed nonstop by the Tea Party and other GOP-related groups during 2009 and 2010. Fearmongering among the elderly, a group wary of Obama in the first place, surely helped to ensure that Congressional Democrats in 2010 not only experienced a

about **socialized medicine** and government takeovers; long lines and rationed care; decisions made by bureaucrats and not doctors. We've heard it all before – and because these fear tactics have worked, things have kept getting worse.”²¹⁹

4.2.2 Socialized Medicine and the PPACA

Socialized medicine is another argument used against the PPACA's individual mandate which opponents²²⁰ purport entails the intrusion of government on an individual's decision to have insurance and ultimately results in the implementation of socialized medicine.²²¹

Socialized medicine is used by opponents to counter the argument that Obama was moved by a **moral imperative** to fight for health reform. The moral imperative issue soon turned into a debate on the concept of socialized medicine: “Many of President Obama's opponents did not believe this [his moral imperative motive] to be so and would often **conflate**

negative swing but suffered a devastating set of electoral setbacks.” Skolpol and Williams, op. cit., p. 163.

2010 is the year Obama lost more seats in the House of Representatives than in the Republican landslide of 1994.

²¹⁹ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

²²⁰ “This fear of government spawned the ‘Tea Party’ movement, which led to the election of many congressmen who pledged to repeal PPACA. Many Americans were convinced that a ‘public option’ would mean government control, and the possibility of government ‘death panels’ denying health care.” Dalen, op. cit., p. 76.

²²¹ The myriad lobbyists convinced many Americans that the government was “taking over health care.” This was a step toward “socialized medicine!” Ibid, p. 576.

universal health care with socialized medicine.²²² This appears to have been done in an effort to sway the public support for health care reform because philosophically the two concepts are different. Universal health care is a concept or principle that supports the notion that everyone is entitled to a **basic level of health care** “which can be delivered through a variety of platforms, to include **a free-market approach.**”²²³ However, **socialized medicine** typically refers to a system in which “the government operates or administers the care.”²²⁴ In any case, socialized medicine has a **history of mistrust** among the American people in the belief that it hides **elements of communism**; it has never been looked upon favourably in the United States. Dating back to the efforts to implement the Social Security Amendments of 1964,²²⁵ which established Medicare²²⁶ and Medicaid,²²⁷ opposition to such reform often centred on demonizing such initiatives by appealing to socialized medicine.

²²² Lamar Odom, Richard Owen, Amina Valley and Phillip Burrell, “Obamacare: an ethical analysis of his leadership and the health reform initiative”, *Leadership in Health Services*, Emerald, 2010.

²²³ Quadagno, op. cit., p. 201.

²²⁴ *The Columbia Electronic Encyclopedia*, Sixth Edition, Columbia University Press, 2013.

²²⁵ This has been discussed in the previous chapter.

²²⁶ “When Medicare was enacted in 1965, it was bitterly attacked as a form of ‘socialized medicine. [...] Today, however, Medicare is one of the most popular statutory programs in America;” which renders the phrase “keep your government hands off my Medicare!” completely obnoxious: “an opponent of reform reportedly demanded a member of Congress to do that.” Huhn, op. cit., p. 4.

²²⁷ “Medicaid would not benefit the old primarily, but the poor, regardless of age and race. [...] Conspicuously absent from Medicaid coverage were the working poor.” Funigiello, op. cit., p. 146.

It follows then, that socialism “is a dirty word in the United States”²²⁸ where **individualism is deeply-ingrained it has become a national trait.** The history of the United States is a history of immigrants²²⁹ who came to the U.S. seeking a better life; they didn’t look to government to solve their problems but fought to forge a better life. Theirs is a story of every individual trying to forge out a livelihood. Frederick Jackson Turner in his seminal work *The Significance of the Frontier on American History*, observed that **“the frontier is productive of individualism.”** In other words, “Americans of the frontier era could not and did not look to government to solve collective problems. Instead, when there was a problem that demanded collective action they formed **voluntary associations.**”²³⁰ As early as the time of **Alexis de Tocqueville**,²³¹ he asserts that “the citizen of the United States is taught from infancy to rely upon his own exertions in order to resist the evils and the difficulties of life; he looks upon the social authority with an eye of mistrust and anxiety, and he claims its assistance only when he is unable to do without it.”²³²

Huhn acknowledges that individualism does not provide with all the answers: “but there comes a point in the development of a society when individual endeavour and voluntary association cannot adequately address

²²⁸ Ibid, p. 305.

²²⁹ So did John F. Kennedy claim in his book, *A Nation of Immigrants*, 1964.

²³⁰ Huhn, op. cit., p. 305.

Collective action is studied in the chapter on individualism.

²³¹ Alexis de Tocqueville, *Democracy in America*, Heffner, ed. 1956, p. 95. 1st published in 1838.

²³² Huhn, op. cit., p. 305.

the problems that people face.”²³³ His view is radically different to those who look down on the PPACA claiming it’s a socialist toll: he considers that the PPACA is socialized medicine “in the sense that all Americans will be called upon to contribute to the cost of health care so that all Americans can gain access to health care.”

Indeed, the cost of health care is shared among Americans for the common good. In this sense, the requirement that federal spending be in pursuit of the **general welfare** comes directly from the Constitution.²³⁴ James Madison and Alexander Hamilton famously disagreed over the proper construction of the Spending Clause.²³⁵ Madison²³⁶ believed that it limited Congress’ powers; Hamilton believed that it didn’t.²³⁷ “The culmination of the Madison-Hamilton struggle took a turn against limited government during the Great Depression with the rise of Social Security”²³⁸

²³³ Ibid, p. 306.

²³⁴ U.S. Constitution, art. I, n° 8, clause 1: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States...”

²³⁵ Taxing and Spending clause. Article I, Section 8, Clause 1 of the United States Constitution: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

²³⁶ James Madison. “The Bank Bill, House of Representatives”, 2 February 1791, in Philip B. Kurland and Ralph Lerner (eds.), *The Founders Constitution: Volume 2 Preamble Through Article 1, Section 8, Clause 1*, 446-47, 1987.

²³⁷ Alexander Hamilton, “Report on Manufacturers”, 1791, in Philip B. Kurland and Ralph Lerner, (eds.), *ibid*.
For a full account of their differences see Thorup, op. cit., p. 950 and Hoffman, op. cit., p. 840.

²³⁸ Thorup, op. cit., p. 955.

and with the court's decision in *Butler v. United States* and *Helvering v. Davies*, among others.²³⁹

“Social Security is now entrenched in American life, and many people depend on it.”²⁴⁰ Those in favour of the PPACA hope the individual mandate will follow suit though some disagree and highlight the differences between either programme, basically: “unlike social security, the PPACA’s individual mandate is not a valid tax under the Constitution [...] and it forces employers to provide employees with private products; [...] social security is about a government program [whereas] the PPACA’s individual mandate is about insurance and bypassing a government program, and it violates the Tenth amendment.”²⁴¹²⁴²

4.3 Moral Imperative – Utilitarianism – Craft Ethics

This section explores the use of the moral imperative by Obama to push his reform through Congress and to convince²⁴³ the American people,

²³⁹ *Butler*, 297 U.S. at 1; and *Helvering and Davies*, 301 U.S. 619 (1937).

²⁴⁰ Thorup, op. cit., p. 965.

²⁴¹ 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”

²⁴² *Ibid.*, p. 965.

²⁴³ “Although Obama may have believed universal health care to be a moral imperative, his challenge was to convey that message to his constituents.” Odom-Forrer, op. cit., p. 2011.

the very moralistic American people²⁴⁴ that health care reform is a must gracious-living- wise.

4.3.1 Need for Reform Based on Facts

From his days as Senator of Illinois,²⁴⁵ Obama has always been a strong advocate of **comprehensive health care reform**. In building his case for reform he often cited facts regarding the forty-seven million Americans that were uninsured, or the fact that half of all personal bankruptcies were caused by medical expenses, the out-of-control rising cost of health care, or the fact that American people spend more per capita on health care than any other industrialized nation.²⁴⁶

Hoffman uses these facts as well as a starting point to analyse the American society and in doing so he joins others who “struggle morally with the fact that nearly 1/5 of all Americans lack insurance, particularly if they are poor or sick, and what such reality says about us as a nation of people. They want to ensure that we create a system that enables all members of

²⁴⁴ “America is the most moralistic country in the developed world. That moralism flows in large from the country’s unique Protestant sectarian and ideological commitments.” Lipset, *American Exceptionalism*, op. cit., p. 27.

“It must never be forgotten that religion gave birth to Anglo-American society. In the United States, religion is therefore mingled with all the habits of the nation and all the feelings of patriotism, whence it derives a peculiar force.” Tocqueville, op. cit., p. 165.

²⁴⁵ He was represented Illinois in the US Senate from January 3, 2005 to November 16, 2008.

²⁴⁶ All this data is made reference to at the beginning of this work where the current situation of the American health care system is described and direct references to the speeches on this matter are made.

their community –locally and nationally- to have equitable access to good medical care when in need.”²⁴⁷

4.3.2 Need for Reform Based on Ethics

4.3.2.1 Moral Imperative

While a different type of president, much like his predecessors, would make a compelling argument for comprehensive change, based solely on the kind of the aforementioned facts (basically, of the economic type), when President Obama addressed the various groups regarding the need for health care reform, he talked about “the Christian imperative espoused by Jesus in the New Testament teachings, where he commanded his followers to feed the hungry, shelter the homeless, and provide care for the sick.” Obama’s advocacy is consistent with the notion that **universal health care is a moral imperative**.²⁴⁸

Quadagno analyses this fact: “under his leadership, President Obama successfully framed the health care reform debate and his policy initiative from an **ethical perspective**. Specifically he advocated a **deontological approach**”²⁴⁹ to resolve the ethical dilemma of universal

²⁴⁷ Hoffman, *Oil and Water*, op. cit., p. 10.

²⁴⁸ Odom, *Obamacare*, op. cit., p. 2011.

²⁴⁹ “The deontological approach to resolving ethical dilemmas most prominent advocate was Immanuel Kant. [...] If President Obama believed it was his duty to promote legislation that would ensure all Americans had access to a basic level of care, he would do so, even if doing so was detrimental to his political future or would exhaust his political capital.” Kennedy, Ted in Obama Speech of June 22nd,

health care by personally declaring that the right to a basic level of health care was a moral imperative.”²⁵⁰ In other words, the impetus for comprehensive change to the health care system should be based on the moral imperative that everyone is entitled to a basic level of health care.

Obama’s double approach for health care reform (economic and moral) is shared and further explained by Pariser:

“The United States spends the highest percentage of its gross domestic product on health care of any ‘developed’ country, yet as of 2009, 46.9 million individuals either had inadequate health-insurance and therefore did not have access to health care. This is just not right. **It is the ethical obligation of society to provide equal health care to everyone.** To achieve this goal, the current system needs to be reformed so that the incentives are changed. Currently, most non-governmental health care is provided to workers as a benefit of employment. Insurance is purchased by employers from private for-profit publicly held insurance companies who pay the providers of health care, physicians, hospitals, pharmaceutical companies, and so forth. The consumers of health care, the patients, and the providers of health care have no incentive to control costs, in fact, both of these groups have incentive to request and provide more services.”²⁵¹

2009. Obama Addresses Seniors and Prescription Drugs. Diplomatic Reception Room – White House. Washington D.C.

²⁵⁰ Quadagno, op. cit., p. 201.

In the teleconference of September 21st, 2010, **Dr. David Gushee**, representing the New Evangelical Partnership for the Common Good explains that there is a moral and religious imperative to provide health care to those who cannot afford it: “I would say, though, it's sad. I'd have to acknowledge that the New Evangelical Partnership for the Common Good was one of the few self-identified evangelical organizations to support health-care reform. And, I mean, we supported it because **health-care reform for every person is a moral imperative rooted in the dignity of the human person, made in the image of God.**”

4.3.2.2 Solidarity

In his speech to Congress on health reform on September 9, 2009, which some credit with “reigniting a then diminished support for reform”²⁵² President Obama defined solidarity - it’s about acting together to reform health insurance:

“That large-heartedness, that concern and regard for the plight of others is not a partisan feeling. It's not a Republican or a Democratic feeling. It, too, is **part of the American character. Our ability to stand in other people's shoes.** A recognition that we are all in this together, that **when fortune turns against one of us,**

²⁵¹ Pariser, loc. cit.

²⁵² Hoffman, *Oil and Water*, op. cit., p. 40.

others are there to lend a helping hand. A belief that in this country, hard work and responsibility should be rewarded by some measure of security and fair play. And an acknowledgement that sometimes government has to step in to help deliver on that promise. This has always been **the history of our progress.**”

It is easy to imagine the President on top of the hill preaching to the travellers on the Arabella... His words are a perfect example of the use of American exceptionalism to move the American people and convince them. Obama reminds them that part of who they are, part of what makes them “special”, “exceptional” is the fact that American people are and have always been generous with each other; and he reminds them as well that government has intervened in the past; he evokes the past to convince them that such intervention is in tune with tradition.

The use that has been made of “solidarity” in America and elsewhere is explained by Hoffman. He also expresses hope that the individual mandate may launch a new wave of attitudes of this kind, i.e. generous and sharing:

“Solidarity is a value most industrialized nations identify as key to their systems of health insurance. [...] Solidarity is the foundation of social insurance institutions: in Europe, as in Canada, that social ethic is based on the **principle of social solidarity**. It means that health care should be financed by individuals on the basis of their ability to pay, but should be available to all who need it on roughly

equal terms. The regulations imposed on health care in these countries are rooted in this overarching principle. [...] Solidarity is the core animating principle of European social health insurance systems. [...] Even though solidarity may not be the most fashionable of American values, it nonetheless weaves through American health policy. American health insurance has moved further away from solidaristic models, and while the industry has moved further away from collective responsibility over the past fifty years, **notions of solidarity still underlie key elements of American health insurance.** The patchwork of social insurance programs (Medicare, Medicaid, SCHIP) is based on the notion of ensuring some Americans access to medical care, regardless of their ability to pay. [...] Many have voiced support for the mandate as a tool that can ignite a more broad-based solidaristic health insurance system in the U.S.”²⁵³

4.3.3 Moral Imperative and the PPACA

4.3.3.1 Importance

Obama makes reference to the underlying moral imperative to his reform in his speeches. The importance of the moral imperative in having successfully passed the PPACA cannot be neglected:

²⁵³ Ibid., p. 39.

“Although the effectiveness of PPACA may be debated for years to come, the fact that President Obama was able to pass a major piece of social legislation when all other Presidents failed raises many questions. Why was President Obama successful when all other Presidents who attempted universal health care failed? What about President Obama’s leadership style that made this initiative successful? Was his decision to pursue universal health care **a moral imperative**? Was the opposition to universal health care pursued in an ethical manner?”²⁵⁴

Oberlander, however, is **sceptical** (to put it mildly) **about the usefulness of the moral imperative**:

“If there is one lesson that we’ve learned about health reform in the last few decades [it’s that] **being right doesn't count for very much**. We can come up with lots of stories to **evoke moral outrage**. And it's not just about the uninsured. There are many Americans with insurance who have inadequate protection that will file for bankruptcy every year because they’re underinsured. But if are going to fight this battle for health reform on moral grounds, were going to lose.”

4.3.3.2 Utilitarian Strategy

²⁵⁴ Odom, *Obamacare*, op. cit., p. 2011.

Although the latter's opinion might seem a bit harsh, in practice some scholars do agree that the moral imperative to push reform through was not the only one used. Although President Obama's personal motivation may have been deontological, "his strategy for implementation seems to have been utilitarian."²⁵⁵ The President geared his strategy to a utilitarian one given the desperate context.²⁵⁶ Brennan approaches the analysis of health care insurance from an ethical perspective and asserts that "much of the legal analysis of health care administration [...] abandoned the idea of universal entitlement through the concept of rights. This backdrop made it increasingly difficult for President Obama to pursue his purely (exaggerate) deontological approach to reform. Public opinion continued to mount that the majority did not support his view that health insurance was a right or entitlement."²⁵⁷

It was time to try a utilitarian strategy. The utilitarian ethics were first presented by **Jeremy Benthan** and **John Stuart Mill** by defining the greater good for **the greatest number of people**. Odom connects this strategy to health care:

²⁵⁵ His utilitarian approach was further supported by a statement from the Director of the Congressional Budget Office (CBO) – health care is 'the single most important factor is determining the nation's long-term fiscal condition.' "This statement from the powerful Director of the Congressional Budget Office created an additional incentive to pass any health care reform with respect to the ongoing fiscal challenges of the country." Rosenbaum and Lambrew in *Charles D. Baker*.

²⁵⁶ Many politicians and experts (see chapters 2 and 3) agreed on the fact that the economic model could not sustain having so many uninsured citizens depend on the system of health care providers. Something had to be done and fast!

²⁵⁷ Patrick McKinley Brennan, "The Individual Mandate, Sovereignty, and the Ends of Good Government: A Reply to Professor Randy Barnett", *University of Pennsylvania Law Review*, Vol. 159, 2010 – 2011.

“In this case, the call for support was based on the number of Americans that lacked even the basic health insurance and the connection was assumed that health insurance and health care were synonymous in outcomes. In other words, without appropriate ‘insurance’ – ‘care’ could not continue to be provided.”²⁵⁸

President Obama was the first one to fully grasp the importance of taking the case of health insurers on board in order to carry out reform, i.e. health reform could not even be thought of without support from insurers.

4.3.3.3 Craft Ethics

However, “when the utilitarian approach to reform appeared to be losing on vocal and visible resistance from the citizenry, causing reluctance on the part of their representatives,” **President Obama, the ultimate pragmatist,**²⁵⁹ **shifted his strategy once more:** “His strategic approach moved to what is referred to as ‘**craft ethics**’ as an ethical approach of finding the norm of operation in particular situations and following that mandate. The norm in politics is deal-making as signified by transactional leadership styles,”²⁶⁰ in other words, he avoided confrontation and tried to reach a consensus, to make a deal. This strategy broadened the scope of the law: it enabled him to focus on the greater good for all of Americans, not just those needing health insurance:

²⁵⁸ Odom, loc. cit.

²⁵⁹ Pragmatism is in fact, a key feature of the American culture.

²⁶⁰ Giampetro-Mayer et al., in Odom, op. cit. p. 1998.

“Health insurance reform was not the solution ‘in and of itself,’ reform was simply a road to better, more affordable, health coverage for a broader range of citizens. In a visible and transparent manner, President Obama, and congressional supporters continued to call for support of health care reform through health insurance modifications to provide a greater good for a greater number, all the while protecting the individual right of choice for those not impacted by virtue of existing coverage.”²⁶¹

The President insists that those that counted with insurance and were happy with it would maintain the *status quo*; he insists on the need to tackle the situation since in the long-run the situation of health care would hurt everybody, i.e. both the uninsured and the insured.²⁶²

4.4 Conclusion - Scholars Ponder

Scholars differ on the extent to which Obama was drawn by a moral need to carry out reform: on one extreme, “Although presidential candidate Obama expressed a deontological approach to the problem of health care reform, one can make a strong argument that President Obama’s failed strategically to maintain the basic transformational leadership trait of staying true to that conviction and lifting the majority of

²⁶¹ Ibid.

²⁶² See chapter 8.

the public to understand the wisdom in his approach;"²⁶³ on the opposite extreme: "he only shifted his strategy, not his belief or conviction to passage, both of those became increasingly obvious as countless hours were spent on the health care reform campaign trail to passage."²⁶⁴

So it seems that the strategic method used to obtain passage of the PPACA was based on **multiple ethical approaches**. This is a matter of concern for some: "If you are a practitioner of ethics based on strong moral compassing, the strategy is unethical from the simple perspective of lacking conviction to the original approach. [...] Absent an absolute conviction to a hard and fast definition of ethics, the strategy of 'whatever it takes to accomplish the greater good' becomes acceptable."²⁶⁵

From a political perspective, however, the PPACA serves as testimony to **President Obama's ideological boldness since** "he [pursued] large-scale change without an ideological consensus across party lines."²⁶⁶ His swift change of strategy when the one being used doesn't seem to be working is also worthy of praise.

Perhaps his predecessors could have met the goal of reform if they had used the same savvy, if they had realized that it was a question of changing strategy to reach a compromise with the opposition party.

Perhaps this shift in strategy might be dodgy as Odom claims, but the goal is morally worthy of praise.

²⁶³ Odom, *Obamacare*, op. cit. p. 2009.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Troy, op. cit.

5 Government Role in Providing Health Care

Right now there's a political debate going on about should we maybe repeal the health care act or -- because this is part of big government. And you've heard the Republican leader in the House²⁶⁷ saying that's going to be one of our priorities -- chipping away at the health care act.

*Obama holds a backyard discussion on health care reform and the Patient's Bill of Rights, Falls Church, Va.,
September 22, 2010.*

But what frustrates the American people is a Washington where every day is Election Day. We cannot wage a perpetual campaign where the only goal is to see who can get the most embarrassing headlines about their opponent – a belief that if you lose, I win. Neither party should delay or obstruct every single bill just because they can. The confirmation of well-qualified public servants should not be held hostage to the pet projects or grudges of a few individual Senators. Washington may think that saying anything about the other side, no matter how false, is just part of the game. But it is precisely such politics that has stopped either party from helping the American people. Worse yet, it is sowing further division among our citizens and further distrust in our government.

*President Obama, State of the Union Address,
Washington. D. C., January 27, 2010.*

²⁶⁷ John Boehner.

5.1 Introduction

Having studied the economic and moral reasons backing reform and how these have been used by the President in his speeches, it is now time to study the role of government in providing health care: i.e. what do people expect from government given the economic and moral circumstances. The chapter begins by describing the size of government in the United States; then, it examines the fact that there is no national health care system as such and the reasons for this; finally, it describes the role that superstatutes have had to play in order to compensate for this deficiency throughout history. This will serve as useful introduction to the study of one of these superstatutes: the PPACA.

5.2 Measuring Government

In the midst of the 2012 election, pundits backing either party agreed on one thing: the elections boiled down to the role of government in the lives of Americans. In order to examine the role of government, first we must ascertain **how big government is in the United States**; and before this we must answer another question: **how to measure the size of government**. To this effect, scholars come up with **different criteria**: the number of people who work for government, the proportion of national income (GDP) controlled by government and how it compares to other countries, how much government spends on traditional activities such as

providing for the common defence or guaranteeing law and order compared to welfare activities such as providing for the old (via Medicare) or the poor (Medicaid).

5.2.1 Social Procurement

According to OECD figures, the analysis of percentage of GDP used in social expenditures by the United States shows a much lower one than other advanced industrialized democracies. This suggests that **the United States is exceptional in the low level of social procurement given the size of its GDP.**²⁶⁸

However, a number of objections are used to dismantle the accuracy of the latter conclusion. Comparisons based on the proportion of GDP controlled by government alone exaggerate this aspect of America's exceptionalism by omitting the costs of important policies (tax expenditures and regulation); these costs are not evident from government budget figures.

Moreover, "social expenditures in the United States are lower than other OECD countries because the United States has been much more successful in avoiding higher levels of unemployment;²⁶⁹ and it uses other

²⁶⁸ oecd.org/unitedstates/BriefingNoteUSA2012.pdf

²⁶⁹ There is no need to spend on unemployment compensation when the rate of employment is about 5 percent (was in the mid-1990s). United States Department of Labour. Bureau of Labour Statistics. bls.gov/news.release/empstat.htm

methods apart from expenditures to drive its economy such as tax incentives²⁷⁰ and government loans.”²⁷¹

5.2.2 Proportion of Economy Subject to Regulation

Another way of measuring the size of government consists in measuring the **proportion of the economy subject to regulation**. The expansion of government runs parallel to the impact of government regulations. Regulation in the United States is carried out by regulatory agencies which were set up²⁷² to protect the public from abuse by **monopolistic industries**.

In the case of health care, the creation of **Medicare and Medicaid** in the 1965 was paralleled to the extension of regulation and the development of a more aggressive mode of regulation. Wilson analyses²⁷³ the growth of regulation since the 30s and concludes: “More businesses in the United States are affected by federal (or state) regulations today than ever before, and those regulations are probably also imposed with unprecedented vigour.”²⁷⁴ There is a federal agency on health care

²⁷⁰ New York, for instance, provides above-average levels of social services thanks to federal tax allowances for state and local tax payments. And we shouldn't forget how the fiscal cliff was averted in January 2013.

²⁷¹ www.oecd.org/unitedstates/BriefingNoteUSA2012.pdf

²⁷² F.D. Roosevelt created the first agencies to fight the grievous effects of Depression in the 30s.

²⁷³ He mentions the number of pages in the Federal Register as one of the methods “to assess the rate of increase in regulation.” Wilson, op. cit., p. 71.

²⁷⁴ Ibid., p. 70.

(Department of Health and Human Services, HHS); and then every state has its own state agency dealing with these matters.

However, the United States does not count with a national system of health insurance as such. This **absence has an impact on the size of government**: “If the two-thirds of expenditures on health care that come from private sources came instead from government, an additional 8 percent or so of GDP would count as ‘government,’ closing the gap between the United States and Sweden.”²⁷⁵

5.3 Failure of National Health Insurance

It is now the moment to analyze the role of government in health care. Walt uses Blondel’s **taxonomy of political systems**²⁷⁶ to analyse and compare the different role the state plays in providing health care services in each one: “liberal-democratic, egalitarian-authoritarian, traditional-inegalitarian, populist, authoritarian-inegalitarian.” The United States would belong to the first group:

“At one end of the continuum countries such as the United States rely almost entirely on the market to provide health care, treating it

²⁷⁵ www.oecd.org/unitedstates/BriefingNoteUSA2012.pdf

²⁷⁶ He uses Blondel’s taxonomy which answers to three basic questions:
“- Who is involved in the political system? Who makes the decisions? That is, how democratic is the system?
- How are decisions taken and disseminated? Is there much discussion of alternatives? That is, is the system liberal or authoritarian?
- What is the substantive aim of policy? To distribute goods and services equally or maintain inequalities? That is, is the system egalitarian or inegalitarian?”
J. Blondel, *Comparative government*, Philip Allan, New York, 1990, p. 28.

as a commodity. The state only steps in to cover the very old [Medicare] and the very poor [Medicaid]. At the other end of the continuum –among the countries of Western Europe, for example – the public sector has played a significant role in health care financing and provision (although in the 1990s this is diminishing) and health care has been seen as an essential part of the welfare state.”²⁷⁷

There is indeed a difference in health care procurement between most democracies, specially **“lavish welfare states”**²⁷⁸ such as Sweden and Norway²⁷⁹ and the United States: **“the United States has repeatedly refused to create a comprehensive system of government-funded health care.”**²⁸⁰ This fact does not follow that the government’s role is negligible: “the federal government is of course the largest source of money for health care. The Medicare²⁸¹ system and Medicaid²⁸² constitute a significant proportion of total federal government expenditures, and of total

²⁷⁷ Walt, loc. cit.

²⁷⁸ Wilson, op. cit., p. 63.

²⁷⁹ Bo Rothstein asserts that “the key to the popularity of the Scandinavian welfare state has been universalism; all citizens expect to benefit from programs, in contrast to the situation in the United States, where the welfare state (in spite of Social Security) is thought to benefit “them”: racial minorities, undeserving poor people, and single mothers.” Quadagno, loc. cit.

²⁸⁰ Ibid.

²⁸¹ Providing health insurance for the elderly.

²⁸² Providing health insurance for the poor, including the elderly who have exhausted their own resources but need nursing home care.

expenditure on health care.”²⁸³ However, government provides no health insurance for everybody. The United States does not count with a government-funded health care system *per se*.

Distrust of government has been described as the underlying force in the various **failed attempts to guarantee universal coverage across the entire twentieth century**. The **history of health care** provides numerous examples of how each proposal for government-financed health care services has been thwarted through the use of **antistatist arguments**. This brief account is from Quadagno.²⁸⁴

“In the 1910s the socialist threat hovered over the AALL campaign for compulsory health insurance.”²⁸⁵ **In the 1940s** the AMA decried Truman’s national health insurance plan as an un-American plot that would destroy the doctor-patient relationship, create a large health bureaucracy, and pave the way for a communist takeover.²⁸⁶ **In the Progressive Era**, the compulsory state health insurance plan was supposedly defeated by the public’s antipathy toward a larger government role in health care.” [The public failed to respond] **“in the 1960s** when the AMA fought against Medicare which involved as significant a federal presence in the health care

²⁸³ Blondel, loc. cit.

²⁸⁴ Quadagno, loc. cit.

²⁸⁵ In the 30s F.D. Roosevelt’s welfare measures had him accused by opponents as a traitor to his own class.

²⁸⁶ These arguments were used every time in political debates to undermine public confidence in national health insurance; and as we have seen, they still are.

system as national health insurance would.”²⁸⁷ However, “Medicare’s peculiar public-private formula, with its numerous concessions to providers and insurers, was a way to assuage public concern about government intervention.” [Besides], “Medicare appeared on the national agenda in a supportive political climate: that of the civil rights movement which had legitimated federal intervention for the pursuit of racial justice, together with President Johnson’s war against poverty.”²⁸⁸ Moreover, the communist threat was no longer a domestic issue but had shifted to a distant war in Vietnam. If the federation could intrude in such sensitive matter (civil matters) it could then carry out changes in health care. Besides, both issues were closely interrelated (a specific example was the existence of segregation in hospitals).²⁸⁹ [Another reason was that] “there was an organized counterforce, the National Council of Senior Citizens,²⁹⁰ to challenge AMA claims and demonstrate that the aged were a worthy and deserving constituency.”²⁹¹

²⁸⁷ “In the 1960s government was perceived to be a force that could serve the greater public good.” Quadagno, loc. cit.

²⁸⁸ On March 16, 1964 President Johnson in a special message to the congress proposed a nationwide war on the sources of poverty.
Lyndon B. Johnson: "Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty," March 16, 1964. Online by Gerhard Peters and John T. Woolley, The American Presidency Project.
presidency.ucsb.edu/ws/?pid=26109.

²⁸⁹ This will be dealt with in the ensuing section as one of the causes for the lack of the absence of a national system of health care.

²⁹⁰ Currently known as the Alliance for Retired Americans.
<http://retiredamericans.org/>

So, despite the fact that antistatism is an enduring feature of American politics, this was at times challenged by facts.

In the 1990s the haunting spectre of big government reappeared to undermine support for President Clinton's Health Security proposal: "distrust of government undermined public confidence in Clinton's health plan, allowing his opponents to claim that federal bureaucrats would destroy the doctor-patient relationship and take away people's right to choose their own doctors."²⁹² The famous campaign launched by the health insurance industry helped achieve this. It is commonly known as the Harry and Louise campaign – a couple who would say things like: "if we let the government choose we lose."²⁹³

This account of the several failed attempts to improve the role of the State in health care makes the PPACA seem quite an achievement.²⁹⁴

5.4 National Health Care and American Exceptionalism

Rabkin considers that the issue of American exceptionalism has gradually boiled down to "Why **no national health care in America?**"²⁹⁵

This has not always been the same:

²⁹¹ Quadagno, loc. cit.

²⁹² Quadagno, loc. cit.

²⁹³ See the ads in youtube: *Harry and Louise on Clinton's health plan* www.youtube.com/watch?v=Dt31nhleeCg

²⁹⁴ "Time and again, the hopes of reformers have been dashed in the pursuit of health care reform, and yet this time, despite the obstacles, they prevailed. After 90 years of effort, the achievement is momentous." Mettler, op. cit., p. 101.

“Two generations ago, discussion of ‘American exceptionalism’ –at least among social scientists- came down to one great question: Why no socialism in America. By the 1980s, however, even self-described socialists in Western Europe had embraced the benefits of markets and privatizations. Soon after, the Soviet empire collapsed and full-scale socialism was largely discredited. America no longer looked particularly unusual in its broader economic patterns.”²⁹⁶

However, in this day and age, the fact that there is no national health care system is seen as an oddity given the wealth of the United States:

- “It represents an anomaly among advanced industrial societies;”²⁹⁷
- “The United States has never guaranteed its citizens health security comparable to that enjoyed by people of other first-world nations.”²⁹⁸

Marshall’s stance sounds awkwardly logical:

“National health care is not a newfound, radical idea. It was proposed by political leaders as diverse as Presidents Richard

²⁹⁵ Rabkin, op. cit., p. 153.

²⁹⁶ Ibid.

²⁹⁷ Lockhart, op. cit., p. 84.

²⁹⁸ Funigiello, op. cit., p. 6.

Nixon and Harry Truman and until recently the proposal enjoyed significant bipartisan support.²⁹⁹ The reason why this is true is because the concept of national health care fits so well within our **constitutional culture and traditions** and is not, as others have argued, inconsistent with our constitutional commitments. There is nothing in our belief in **individualism** or in our **distrust of government** that suggests that the United States cannot act to alleviate health-related burdens on its citizenry.”³⁰⁰

Why then the lack of a proper national health care system? Jill Quadagno comes up with a list of causes. She starts with the following caveat: “Each of these forces may account for the defeat of national health insurance in a given instance. None provides an overarching framework that can explain the outcome of health care reform debates across the grand panorama of the twentieth-century history.”³⁰¹ The following sections

²⁹⁹ “The Obama health Law stands in stark contrast to this history of bipartisan compromise. It was passed on a strictly partisan vote; only the opposition was bipartisan, as some Democrats joined the Republicans in standing against it.” Troy, op. cit., p. 24.

“Now, this is the plan I'm proposing. It's a plan that incorporates ideas from many of the people in this room tonight -- Democrats and Republicans. And I will continue to seek common ground in the weeks ahead. If you come to me with a serious set of proposals, I will be there to listen. My door is always open. And it's a plan that incorporates ideas from senators and congressmen; from Democrats and Republicans, and yes, from some of my opponents in both the primary and general election.”

Obama Addresses Seniors and Prescription Drugs. Diplomatic Reception Room – White House. Washington D.C. June 22nd, 2009.

Primary election in August 27th, 2008; General election in November 4th, 2008.

³⁰⁰ Marshall, op. cit., p. 151.

³⁰¹ Ibid., p.15.

use Quadagno's structure to deepen into the reason for this controversial aspect of American exceptionalism.

5.4.1 Philosophical and Political Reasons

The idea that a national health care system is against traditional constitutionalism is rooted in a profound **distrust of government**. Influenced by English philosopher Thomas Hobbes, the founders viewed **government as a dangerous but necessary remedy**: “in speculating on the motives for government, [they] identified **the pervasive role of fear and the danger of violent death, holding famously that where no government prevails to secure physical safety and property, there can also be no enduring knowledge, art, or civilisation** – leaving human lives ‘solitary, poor [sic], nasty, brutish and short’³⁰².”³⁰³

Distrust of political power by one single entity leads to its forced diffusion. Political power in the United States is diffused to a degree unmatched in any other country: “At the national level, authority is divided among three branches of government –the executive branch, Congress, and the courts, each with its own independent authority, responsibilities, and bases of support- and among the sovereign states, which have the right to nullify federal legislation. At the legislative level, authority is further split

³⁰² Thomas Hobbes in *Leviathan*.

³⁰³ Griffin Trotter, op. cit., p. 1.

between the House and the Senate as well as numerous committees and subcommittees.”³⁰⁴

The **historical reasons behind this tradition of distrust of government** go back to the time when the Constitution was written:

“Fighting against a centralized monarchical state, the founding fathers distrusted a strong unified government.³⁰⁵ [...] The chronic antagonism to the State derived from the American Revolution has been institutionalized in the unique division of powers that distinguishes the United States from parliamentary regimes, where parliament, or more realistically the cabinet, has relatively unchecked power, much like that held by an absolute monarch. [...] The American Constitution, the oldest in the world,³⁰⁶ established a divided form of government, the presidency, two houses of Congress and a federal high court, and reflected a deliberate

³⁰⁴ Jill Quadagno, op. cit., p. 14.

³⁰⁵ “The American disdain of authority, for conforming to the rules laid down by the state, has been related by some observers to other unique American traits, such as the highest crime rate, as well as the lowest level of voting participation, in the developed world. Basically, the American revolutionary libertarian tradition does not encourage obedience to the state and the law.” Lipset, *American Exceptionalism*, op. cit., p. 21.

³⁰⁶ Other scholars specify: “It is the oldest written constitution in the world **still in force**.” Noah Feldman, Bemis Professor of International Law at Harvard Law School. *Harvard Gazette*.

<http://news.harvard.edu/gazette/story/2011/09/the-constitution-and-the-question-of-power/>

So does the Britannica Encyclopaedia: “The oldest written national constitution in use.”

decision by the country's founders to create a weak and internally conflicted political system."³⁰⁷

This distinction between **parliamentary and presidential systems** was explained as early as 1867³⁰⁸ by Walter Bagehot:³⁰⁹

"The fusion of the legislative and executive functions may, to those who have not much considered it, seem but a dry and small matter to be the latent essence and effectual secret of the **English Constitution**; but we can only judge of its real importance by looking at a few of its principal effects, and contrasting it very shortly with its great competitor, which seems likely, unless care be taken, to outstrip it in the progress of the world. That competitor is the **Presidential system**. The characteristic of it is that the President is elected from the people by one process, and the House of Representatives by another. The independence of the legislative and executive powers is the specific quality of Presidential Government, just as their fusion and combination is the precise principle of Cabinet Government."³¹⁰

<http://global.britannica.com/EBchecked/topic/134197/Constitution-of-the-United-States-of-America>

³⁰⁷ Lipset, op. cit., p. 39.

³⁰⁸ Date of publication of *The English Constitution*.

³⁰⁹ "Economist, political analyst, and editor of *The Economist* who was one of the most influential journalists of the mid-Victorian period." *Britannica Encyclopaedia*.
<http://global.britannica.com/EBchecked/topic/48750/Walter-Bagehot>

The framers of the United States Constitution deliberately created a “**conflicted political system**”³¹¹ to prevent any power from taking over the rest, so that every power had to be vigilant of the other; thus, the American political system includes a system of **checks and balances**³¹² which is designed to slow down the policy-making process and prevent decisions from being made abruptly by one power alone.

5.4.2 Federalism – Structure of the U.S. State and its Institutions

Federalism is another key factor to explain distrust of government. The states can implement their own laws, maintain their own sources of revenue, and the Constitution establishes a six-year term in office for senators, “regardless of what their home state legislature or governor might prefer.”³¹³

The structure of the American state has continually frustrated efforts to enact national health insurance: “the decentralized structure impedes policy innovation by increasing the number of veto points where even small numbers of opponents can block policy initiatives. It allows special interests

³¹⁰ Walter Bagehot, *The English Constitution*, Oxford University Press, Oxford, 2009, p. 14. First edition published in 1867.

³¹¹ Ibid.

³¹² Definition of checks and balances: “Arrangement of governmental powers whereby powers of one governmental branch check or balance those of other branches.” *Black’s Law Dictionary*, West Publishing Co., St. Paul, Minn, 1990.

³¹³ Rabkin, op. cit., p. 157.

to exercise a unique influence on policy outcomes through lobbying³¹⁴ of individual legislators to support their preferred policies, opposing those that obstruct their agendas and helping to determine the issues that legislators interpret as important in the first place.”³¹⁵

The PPACA has been challenged by 28 states. Rabkin asserts: “regardless of political affiliation, these lawsuits demonstrate a fact about American federalism: We have a system in which **state governments** respond to their own political incentives.”³¹⁶ This is made clear in the different degrees of acceptance by states of certain aspects of the PPACA: specifically, health insurance exchanges³¹⁷ and expansion of Medicaid.³¹⁸

All in all, Gable numbers the programmes (public health initiatives) that are set in motion through the PPACA which “signify a moderate but important regulatory shift in the role of the federal government in public health: creation of the Prevention and Public Health Fund, expansion of clinical and community preventive services, establishment of menu nutrition

³¹⁴ The total spent in lobbying so far in 2013 is \$2.38 Billion; the total number of lobbyists for the same period is 11,935; the total number of clients lobbying on health issues is 1,798.
www.opensecrets.org/lobby/

³¹⁵ Quadagno, op, cit. p. 205.

³¹⁶ Rabkin, op. cit., p. 157.

³¹⁷ Rick Manning. “Obamacare implementation craters under state objections.” Americans for Limited Government. 19.11. 2012.
netrightdaily.com/2012/11/obamacare-implementation-craters-under-state-objections/

³¹⁸ “Where each state stands on ACA’s Medicaid expansion.” March 4, 2013. The Advisory Board Company.
advisory.com/Daily-Briefing/2012/11/09/MedicaidMap

labelling requirements, and funding of demonstration projects to encourage individualized wellness plans.”³¹⁹

5.4.3 Antistatist Political Culture

Antistatism in health care is a reflection of an antistatist **political culture**. Funigiello claims that political culture explains the absence of a public health care system:

“The United States is the only major industrialized Western nation not to have implemented a national health security programme.”³²⁰

The reason for this omission stems in large measure from the **hostile political culture** that evolved in the formative years of American health policy, beginning with debates over the proper role of government in health care and the responsibility of the medical community for health care reform, and continuing through the flawed strategies and missed opportunities of Progressive-era reformers and New Dealers to legislate health and sickness insurance laws.”³²¹

³¹⁹ Gable, loc. cit.

³²⁰ “Health indicators and expenditures in the United States do not compare favourably to other high-income countries. Health services in the United States are more expensive and less effective when considered at the population level. The United States has by far the most expensive health care system in the world.” Gable, loc. cit.

Chapter 2 proves the latter statements with relevant statistics.

³²¹ Funigiello, loc. cit.

Quadagno analyses the **origin** of this phenomenon:

“Because Americans honour private property, hold individual rights sacred, and distrust state authority, reformers have found it difficult to make a convincing case for government financing of health care. Americans’ ambivalence toward government and their bias towards private solutions to public problems stands in the way. We can no more trust the state to make decisions about our health care than we can about what make of car to drive, what colour shirt to wear, or which brand of dental floss to use, or so the thinking of many goes.”³²²

This political culture feeds a **persistent negative attitude** about the role of government. The PPACA is controversial because it doesn’t add up to this attitude. It promotes national health insurance to provide another major programme apart from social security, i.e. national health care. Implementation of this programme has the added effect of popularizing “big government” since everybody would be entitled to benefit from a national system of health care.

Antistatism provides enduring symbols and arguments that come up in political debates over the **welfare state**: “It helps to dramatize the issues, limit the potential range of options considered legitimate choices, and justify inaction.” ³²³ As we saw in previous chapter, policy makers invoke

³²² Quadagno, op. cit. p. 12.

³²³ Ibid., p. 203.

alternative values of community and social responsibility, moral imperative and ethics to support government intervention.

5.4.4 Absence of a Working-Class Movement nor Labour-Based Political Party

The United States hasn't witnessed the birth of a working-class movement nor labour-based political party such as the Labour Party in Great Britain. This is yet another reason to account for the failure of national health insurance in the United States. Many European countries' working-class parties organized pension programmes such as Social Security to provide older workers with a source of income to retire; and they fought for unemployment insurance to provide workers with a buffer against downturns in the economy. In the United States, by contrast, trade unions pursued a different path: "they never formed a separate political party"³²⁴ and in some instances actively opposed government social programmes."³²⁵

Quadagno describes **the key milestones** in this area:

- "Early in the twentieth century the AFL denounced state health insurance proposals, claiming that they would subordinate workers

³²⁴ The 20th century was witness to a story of rivalry among the different organizations: "The AMA versus the AFL-CIO in the 1950s and again in the 1960s; the Health Insurance Association of America and the National Federation of Independent Business versus senior citizens' organizations in the 1980s; and the Health Insurance Association of America and the National Federation of Independent Business allied against a loosely knit and largely ineffectual coalition of social reformers in the 1990s." Quadagno, loc. cit.

³²⁵ Ibid.

to the state and undermine workers' efforts to resolve their own problems.”

- In the 1910s, “some AFL chapters endorsed the compulsory health insurance bill.”

- In the 1920s “the United Mine Workers [UMWA] worked for state old-age pensions, then supported a federal old-age pension plan.”

- “The Social Security Act of 1935³²⁶ was enacted without strong labour backing.”

- [In the 40s, trade union] “internal divisions over strategy and tactics made it impossible for workers to speak with one voice.”

- However, in the 1950s “an organized labour movement mobilized and managed the success of disability insurance and Medicare. These programmes were important to the labour movement because they shifted the cost of insuring disabled workers and retirees to the public purse and thus allowed unions to pursue wage increases and other benefits for working members in their negotiated contracts.”

- “This brief historical moment of labour unity and strength was over by the late 1960s, when the trade unions once again split into warring factions. The AFL-CIO opposed Senator Kennedy’s compromise for a basic benefit package and since then the unions never again exerted their weight on behalf of universal coverage.”

- Again, “promised trade union support failed to materialize when President Clinton proposed his Health Security plan.”

³²⁶ The single most important piece of social welfare legislation of the twentieth century.

5.4.5 Racial Politics of the South

Prima facie it would seem that health care would have little to do with racial politics of the South. However, it is a fact that “national health insurance posed the threat that federal funding of health care services would lead to federal demands to integrate health care facilities and tear down racial barriers.”³²⁷

Quadagno provides the historical background to this argument: “The racial politics of the South had a stifling effect on health policy debates from the 1930s to the 1960s. [...] From the New Deal until the 1960s, southern politicians³²⁸ conspired with conservative Republicans to block national health insurance.³²⁹ [...] The grip of the South on national social welfare legislation weakened considerably in the 1960s and was broken in the Democratic sweep of the 1964 election.³³⁰ The enactment of Medicare,

³²⁷ Jill Quadagno, op. cit., p. 14.

³²⁸ “Southern politicians opposed any government intrusion into the health care system because they feared federal intervention in local racial practices. They used their control of key congressional committees to bottle up legislation entirely or to demand that new social programmes be locally administered. At their insistence, agricultural and domestic workers (two-thirds of all black workers) were excluded from the Social Security and unemployment insurance programs of the Social Security Act, and local welfare authorities were allowed to determine who would receive benefits from the means-tested programs for the poor (Aid to Dependent Children and Old-Age Assistance).” Quadagno, op. cit.

³²⁹ Disability insurance was not blocked: “What made disability insurance acceptable to them was a compromise hammered out by Nelson Cruikshank and his colleagues that the program would be run by state health departments, not federal officials.” Ibid.

“Nelson Hale Cruikshank (1902-1986) was the first director of the AFL-CIO Department of Social Security, founded in 1955. A Methodist minister, labor lobbyist and government official, he is best remembered as a leading voice for Social Security and health insurance, particularly for the elderly and people with

in turn, gave federal officials the leverage to force southern health care facilities to integrate.”³³¹

The following assertion is chilling given that the author uses the present tense: “While overt racial barriers [...] were removed in the wake of Medicare, racial dynamics have not disappeared entirely from policy-making processes. [...] Racial inequality in access to benefits has become a secondary effect of employment. Racial politics has also been transmitted through coded messages implying that minorities are undeserving beneficiaries of social programmes.”³³²

5.4.6 Special Interests to Keep Health a Private Endeavour

A constant key note throughout the history of health care in the United States is that each attempt to guarantee universal coverage has been resisted by powerful special interests: “Over the course of the twentieth century, a constellation of interest groups [...] vying for power and

disabilities.” American Federation of Labor and Congress of Industrial Organizations:
aflcio.org/About/Our-History/Key-People-in-Labor-History/Nelson-Hale-Cruikshank-1902-1986

³³⁰ “American presidential election held on November 3, 1964, in which Democratic President Lyndon B. Johnson defeated Republican Barry Goldwater in one of the largest landslides in U.S. history.”
Britannica Encyclopaedia. global.britannica.com/EBchecked/media/67692/Results-of-the-American-presidential-election-1964-Presidential-Candidate-Political

³³¹ “The southern health care system, like other southern institutions, was racially segregated. Most hospitals maintained ‘white’ and ‘coloured’ floors, labeled equipment by race, and denied staff privileges to black physicians.” Quadagno, loc. cit.

³³² “Such messages permeated the welfare reform debate in 1996, in which welfare recipients were implicitly portrayed as black, promiscuous, and lazy, even though the majority of AFDC recipients were White. They also provided a subtle subtext in debates over Clinton’s Health Security plan.” Quadagno, op. cit., p. 204.

the contending groups [...] emerged around the health care financing system, jockeying for position every time health care reform was under consideration –trade unions, small businesses, large manufacturers, senior citizens, welfare recipients, and the privately insured middle class.”³³³

These interests used every weapon in hand to **maintain the financing of health services a private endeavour**.³³⁴ “for the first half of the twentieth century, the antireform coalition was led by physicians, who feared that government financing of medical services would lead to government control of medical practice. Physicians appeared to have the deciding voice in health policy debates because their political goals were compatible with those of key allies” (hospital administrators,³³⁵ large manufacturers,³³⁶ and insurers).³³⁷

³³³ Quadagno, loc. cit.

³³⁴ “Even the trade unions, suspicious of state power, championed the medical societies when compulsory state health insurance was on the agenda in the Progressive Era.” Quadagno, loc. cit.

³³⁵ “Hospital administrators created Blue Cross in the 1930s as a way to finance hospital care and dampen demand for a government solution.” Quadagno, loc. cit. “The Blue Cross and Blue Shield Association is a national federation of 37 independent, community-based and locally operated Blue Cross and Blue Shield companies. The Association owns and manages the Blue Cross and Blue Shield trademarks and names in more than 170 countries and territories around the world. The Association grants licenses to independent companies to use the trademarks and names in exclusive geographic areas. [...] Operating and offering healthcare coverage in all 50 states, the District of Columbia and Puerto Rico, the 37 Blue Cross and Blue Shield companies cover 100 million Americans. Nationwide, more than 96% of hospitals and 91% of professional providers contract with Blue Cross and Blue Shield companies — more than any other insurer.”

Blue Cross and Blue Shield Association. [bcbs.com/about-the-association/](https://www.bcbs.com/about-the-association/)

³³⁶ “Large manufacturers viewed fringe benefits as a way to fend off trade unionism.” Quadagno, loc. cit.

³³⁷ “Insurers viewed compulsory health insurance as unwelcome competition.” Quadagno, loc. cit.

Physicians needed the backing of key elected officials, i.e. those who controlled key congressional committees and who were willing to convert their preferences into negative votes: “for three decades, physicians worked to secure the victory of friends such as Senator Robert Taft³³⁸ and to vanquish enemies such as Senator Claude Pepper.³³⁹”³⁴⁰ The AMA could only win when it could count on powerful coalition partners:

“In the 1950 election, the AMA’s rhetorical pyrotechnics had real political consequences, helping to restructure the balance of power in Congress and reshape the political landscape in a more conservative direction. [...] These early victories convinced public officials that physicians were an omnipotent political force and lulled them into a false sense of security. It took more than a decade to disabuse both groups of these beliefs.³⁴¹ [...] The contest over Medicare helped the Democrats sweep the House and Senate in the 1964 election and gave northern Democrats a majority without the South for the first time since the New Deal shattering organized medicine’s power base. [...] With the AMA [...]

³³⁸ “He generally opposed any measure he considered “big government” or anti-business.”

“Robert A. Taft. More than ‘Mr. Republican’.” *Senate Leaders*. United States Senate.
senate.gov/artandhistory/history/common/generic/People_Leaders_Taft.htm

³³⁹ For reference on Senator Claude Pepper see footnote in section 3.4.1.

³⁴⁰ Quadagno, loc. cit.

³⁴¹ “... In the 1950s, the AFL-CIO wooed southern Democrats and co-opted the insurance industry in the fight for disability insurance. Then in the 1960s, labor leaders joined with senior citizens to vanquish the AMA, their victory secured by the defection of hospital administrators and insurance companies.” Ibid.

trying to restore its tarnished image, and with millions of working-age adults and children without coverage [...] the 1970s seemed a propitious time to act. [...] But as the AMA moved off center stage, the insurance industry moved to the forefront of health policy debates. From the 1970s to the 1990s, the Health Insurance Association of America lobbied against national health insurance and long-term care insurance for the frail elderly, mobilizing small-business groups such as the National Federation of Independent Businesses and insurance agent associations to their cause.”

This is in effect, a fact that contributes to making the PPACA exceptional as well since it has received the support from all stakeholders, including physicians: “Our overall efforts have been supported by an **unprecedented coalition** of doctors and nurses, hospitals, seniors' groups, and even drug companies -- many of whom opposed reform in the past.”³⁴²

Obama addresses physicians in particular, for he is aware of the role³⁴³ they have played in blocking reform in the past; he mentions how the law will directly affect them:

³⁴² President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9th, 2009.

³⁴³ The role comes with its share of lobbying: “Over the past decade, the amount that strictly health-related groups have spent on lobbying -\$3.788 billion dollars-ranked second only to spending by the finance, insurance, and real estate sector, and much of the lobbying by the latter industries –as well as by other miscellaneous business groups –also focused on health care. OpenSecrets.org/lobby/top.php?type=c), 2010, “Ranked Sector.”

“My view is that health care reform should be guided by a simple principle: fix what's broken and build on what works. If we do that, we can build a health care system that allows you to be physicians instead of administrators and accountants; [...] All of that information should be stored securely in a **private medical record** so that your information can be tracked from one doctor to another – even if you change jobs, even if you move, and even if you have to see a number of different specialists. That will not only mean less paper pushing and lower administrative costs, saving taxpayers billions of dollars. It will also make it easier for physicians to do their jobs. It will tell you, the doctors, what drugs a patient is taking so you can avoid prescribing a medication that could cause a harmful interaction. It will help prevent the wrong dosages from going to a patient. And it will reduce medical errors that lead to 100,000 lives lost unnecessarily in our hospitals every year. [...] And we need to rethink the cost of a **medical education**, and do more to reward medical students who choose a career as a primary care physicians and who choose to work in underserved areas instead of a more lucrative path.”³⁴⁴

³⁴⁴ Obama’s Speech On Health Care Reform at the American Medical Association’s Annual Conference, as released by the White House. Washington, D.C. June 15, 2009.

5.5 Superstatutes Save the Day...

Some scholars consider the PPACA and other “superstatutes” as “part of [America’s] ‘fundamental law,’³⁴⁵ alongside the Constitution itself.”³⁴⁶ These superstatutes are *de facto* “constitutional amendments”³⁴⁷ which compensate for the rigidity imposed by the formal procedures envisaged by the Constitution to introduce amendments.³⁴⁸

The PPACA and other constitutional texts should serve worthy human purposes... [which] may sometimes require government aid³⁴⁹ rather than laissez-faire libertarianism: "Are we just responsible for ourselves, or are we a community, and everybody's responsible for each

³⁴⁵ Eskridge & Fedejohn consider the Medicare Act of 1965 “an example of a statutory commitment to a positive benefit that has become entrenched as part of America’s fundamental law.” Brennan, *op. cit.*, p. 1642. Hence the phrase: “Don’t touch my Medicare.”

³⁴⁶ Brennan, *op. cit.*, p. 1642.

³⁴⁷ This could be somehow paralleled to the relationship between the current Spanish Constitution and the different regional Statutes which together form part of the so-called ‘block of Constitutionalism.’ In theory there should be no constitutional or legal clashes between the two. The Constitutional Court is in charge of making sure of this.

³⁴⁸ Article V: “The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”

³⁴⁹ “In the era of the framers, there was no expectation that the federal government would come to the rescue if a town were struck by flood or famine. Now there is, as shown by the lashing the Bush administration got for its slow reaction to Hurricane Katrina in 2005.” Coy, *op. cit.*, p. 26.

other?’³⁵⁰ If it’s the latter, then with the benefit of the safety net comes the responsibility to share in its cost.”³⁵¹ In other words, health care is of such importance that every American should contribute to its sustenance with a view to attain a certain standard for each individual. Trotter argues that in the United States and most other flourishing nations, there has been success in bringing relative security against violence to ordinary lives; but now “it is diseases that threaten most directly and ubiquitously, and it is diseases we fear, for most of us, much more than we fear violence. More importantly, contemporary medicine offers effective new technologies for treatment and protection from disease, and these protections are increasingly viewed as **necessities that should, in analogy to military and police protections, be made available through government to all citizens.**”³⁵²

The PPACA is a superstatute and its individual mandate is not a brief, single-subject statute but rather “an essential part of a lengthy, complicated and detailed statute creating a comprehensive framework for regulating interstate commerce.”³⁵³ This framework has been the legal means envisaged by the PPACA to “bring the United States as close as it has ever been to having something which generally could be called **national health insurance.**”³⁵⁴

³⁵⁰ Mark Browne in Coy, loc. cit.

³⁵¹ Coy, op. cit., p. 26.
See section 3.2.1.

³⁵² Ibid., p. 1.

³⁵³ Huhn, op. cit., p. 333.

³⁵⁴ Lockhart, op. cit., p. 202.

5.6 Conclusion

This chapter analyses another aspect of the American health care system which is closely related to American exceptionalism: America is an OECD country which does not count with a public health care system. The study of the reasons for this absence serves to explore aspects of the history of the United States, aspects of the American character, aspects of the American people, in effect, aspects of American exceptionalism. This chapter serves as well as a clarifying introduction to the analysis of the PPACA in the next one.

6 Reform comes with the PPACA

Those of us in public office can respond to this reality by playing it safe and avoid telling hard truths and pointing fingers. We can do what's necessary to keep our poll numbers high, and get through the next election instead of doing what's best for the next generation. But I also know this: if people had made that decision fifty years ago or one hundred years ago or two hundred years ago, we wouldn't be here tonight. The only reason we are is because generations of Americans were unafraid to do what was hard; to do what was needed even when success was uncertain; to do what it took to keep the dream of this nation alive for their children and grandchildren. Our administration has had some political setbacks this year, and some of them were deserved. But I wake up every day knowing that they are nothing compared to the setbacks that families all across this country have faced this year. And what keeps me going – what keeps me fighting – is that despite all these setbacks, that spirit of determination and optimism – that fundamental decency that has always been at the core of the American people – lives on.

State of the Union Address, Washington, D. C. January 27th, 2010.

In the end, what this day represents is another stone firmly laid in the foundation of the American Dream. Tonight, we answered the call of history as so many generations of Americans have before us. When faced with crisis, we did not shrink from our challenge -- we overcame it. We did not avoid our responsibility -- we embraced it. We did not fear our future -- we shaped it.

*Obama makes remarks after House passes health-care legislation,
Washington, D.C. March 21, 2010.*

6.1 Introduction

Having studied the situation of the health care system in the United States, and established the need to reform it, the reader is now in a perfect position to deepen into the knowledge of the PPACA. This chapter describes the situation when it was passed and the huge opposition it had to overcome in order to make it happen. It also describes the different reactions when it was passed –some praised it while others trashed it. All this is reflected on the speeches.

6.2 The Context: Economic Recession

Throughout his speeches Obama makes reference to the grievous economic circumstances he has had to face from the moment he took office³⁵⁵ and the measures taken to stop its worst effects:

- “From the moment I took office as President, the central challenge we have confronted as a nation has been the need to lift ourselves out of the worst recession since World War II. In recent months, we have taken **a series of extraordinary steps**, not just to repair the immediate damage to our economy, but to build a new foundation for lasting and sustained growth. We are creating new jobs. We are

³⁵⁵ He was elected the 44th President of the United States on November 4, 2008, and sworn in on January 20, 2009.
whitehouse.gov/administration/president-obama

unfreezing our credit markets. And we are stemming the loss of homes and the decline of home values.”³⁵⁶

- When I spoke here last winter, this nation was facing **the worst economic crisis since the Great Depression**. We were losing an average of 700,000 jobs per month, credit was frozen, and our financial system was on the verge of collapse.”³⁵⁷
- “When I came into office, obviously we were confronted with a **historic crisis. The worst financial crisis since the Great Depression**. We had lost 4 million jobs in the six months before I was sworn in, and we had lost almost 800,000 the month I was sworn in. Obviously the economy has been uppermost on our minds and **I had to take a series of steps** very quickly to make sure that we prevented the country from going into a second Great Depression, that the financial markets were stabilized. We've succeeded in doing that and now the economy is growing again. [...] But when I ran for office, I ran not just in anticipation of a crisis. I ran because middle-class families all across the country were seeing their security eroded, partly because between the years 2001 and 2009, wages actually went down for the average family by 5 percent. We had the slowest job growth of any time since World War II. The Wall Street Journal³⁵⁸ called it ‘the lost decade’.”³⁵⁹

³⁵⁶ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

³⁵⁷ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. September 9, 2009. Washington, D.C.

Secretary Sebelius makes reference to these circumstances as well: “And, you know, we are implementing these reforms at what is a very difficult moment for our country. When the administration came to office in January 2009, **the economy was sinking to the bottom of the biggest economic downturn since the Great Depression.**”³⁶⁰

Despite the economic circumstances Obama wishes to push reform through: “That's what we can do with this opportunity. That's what we must do with this moment. I know people are cynical we can do this. I know there will be disagreements about how to proceed in the days ahead. But I also know that we cannot let this moment pass us by.”³⁶¹

These words are revealing of what it could be a recurring feature in the history of health care reform in the United States: is it a mere coincidence or is it becoming the norm, i.e. in moments of economic distress, governments must fight for measures that broaden the welfare state. Indeed, before the PPACA, Roosevelt succeeded in passing the **Social Security Act of 1935** during an even worse economic recession. In moments as these, people turn to government for help and one way to respond to his painful call is by implementing typical welfare measures.

³⁵⁸ David Weiner, “The Lost Decade of Stock Investing”, *The Wall Street Journal*, 15 October 2009.
online.wsj.com/article/SB125556534569686215.html

³⁵⁹ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. 11 September 22, 2010. 59 A.M. EDT.

³⁶⁰ Obama Holds Teleconference on Affordable Care Act. September 21st, 2010.

³⁶¹ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

Does it follow then, that the optimal conditions for development of welfare are those imposed by an economic downturn (the tougher, the better?). It seems that only under these circumstances governments find the moral support to fight against almighty stakeholders, in the case of health care, insurance companies.

Wahl makes an interesting distinction between state roles:

“The state as an arena for welfare and democratic processes on the one hand, and the state as a power apparatus and guarantor of the existing economic order on the other. It is the latter role that has gradually been strengthened –and changed- over the past couple of decades, while the former has been weakened. The state is being placed under increasing pressure by more intense international market competition and by the free movement of capital across national borders. The fact that it is being exposed to increased pressure and system coercion does not of itself mean that it is weakened. It can just as well lead to it becoming stronger – but as an instrument for the economic interests that have strengthened its position.”³⁶² The state can then enforce policies which strengthen a country’s competitiveness “by reducing total labour costs, including public social costs”³⁶³ which render the welfare state weak and powerless.

³⁶² Asbjorn Wahl, *The Rise and Fall of the Welfare State*, Pluto Press, London, 2011, p. 90.

³⁶³ Op. cit., p. 91.

It seems that only under painful economic circumstances the role of the state “as an arena for welfare and democratic processes” can grow in strength.

6.3 Legislative Hurdles

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act, the “PPACA” (H.R. 3590).³⁶⁴ A week later, the PPACA was amended by the Health Care and Education Affordability Reconciliation Act (H.R. 4872).³⁶⁵ Together they involve a “**substantial overhaul of the United States health care system**.”³⁶⁶ Their purpose is to ensure that all Americans have affordable health insurance through the enforcement of an individual mandate. Such mandate is at the core of the numerous obstacles and setbacks that the passing of these two Acts were to overcome: “Given the sometimes ugly, ‘sausage making’ process that produced the ACA”³⁶⁷ “the very fact that it survived Congress’s many hurdles is remarkable.”³⁶⁸

The legislative process is detailed in the following section: The House of Representatives introduced its version of health care reform bill,

³⁶⁴ Available at gpo.gov/fdsys/pkg/BILLS-11hr3590eas/pdf/BILLS111hr3590eas.pdf

³⁶⁵ Ibid.

³⁶⁶ Held, op. cit., p. 718.

³⁶⁷ Berman, op. cit., p. 377.

³⁶⁸ Hoffman, op. cit., p. 828.

H. R. 3200, cited as 'America's Affordable Health Choices Act of 2009,' on July 14, 2009. "The Chairman of the Committee on Energy and Commerce, Representative Henry A. Waxman, introduced it in his opening statement as 'landmark legislation' and a 'defining moment for our country'"³⁶⁹ since the stated objective of the 1017-page document is "to provide affordable, quality health care for **all** Americans and reduce the growth in health care spending."³⁷⁰ The same House "approved the Patient Protection and Affordable Care Act on March 21, 2010 by a 219-212 vote with no Republican support. The Senate had previously placed the bill on December 24, 2009 by a 60-39 vote with no Republican support. Shortly after approving the PPACA, [on March 21, 2010] the House passed a package of amendments in the Health Care and Education Reconciliation³⁷¹ Act of 2010."³⁷² With a few minor changes, this was approved by the Senate (56-43) and again by the House (220-207) on March 25."³⁷³ It modestly

³⁶⁹ George. Loc. cit.

³⁷⁰ Ibid.

³⁷¹ "Reconciliation" makes reference to the legislative procedure used to pass the law: "In the Senate, where the need to assemble sixty votes to stop a filibuster frequently threatens to delay or prevent the passage of legislation, reconciliation is a process that allows budget bills to come to a vote and be decided based on a simple majority. [It] played a crucial role in completing the 2010 health reform legislation." Jacobs and Skocpol, op. cit., p. 188.

³⁷² Obama made reference to these amendments in a speech: "Now as momentous as this day is, it's not the end of this journey. On Tuesday, the Senate will take up revisions to this legislation that the House has embraced, and these are revisions that have strengthened this law and removed provisions that had no place in it. Some have predicted another siege of parliamentary maneuvering in order to delay adoption of these improvements. I hope that's not the case. It's time to bring this debate to a close and begin the hard work of implementing this reform properly on behalf of the American people. This year, and in years to come, we have a solemn responsibility to do it right." Obama Makes Remarks after House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21st, 2010.

amended the PPACA “paving the way for final passage in the House and Senate just four days later.”³⁷⁴

The President signed the original PPACA into law on March 23 and the final Reconciliation bill on March 30, 2010, the following week, completing “**the most significant social legislation in the United States since the enactment of Medicare and Medicaid in 1965.**”³⁷⁵

These legislative developments (the PPACA and the HCERA) have significantly **altered the legal framework** governing health care in the United States, sparking high profile litigation and straightened public debate. Once they became enforceable pieces of legislation, “**a total of 28 states [challenged] the constitutionality of PPACA in federal court** and thus upheld their promise. **The principal claims** were that the PPACA’s regulation of the states violate the independent sovereignty, and that the Act’s minimum coverage requirement exceeds Congress’s enumerated powers. This litigation is immensely important, as it concerns a hugely significant statute and raises fundamental questions of constitutional federalism.”³⁷⁶ All these issues are discussed in this work.

The speeches are a great source of information to understand the difficulties embraced in passing the law:

“And that is precisely what those of you in Congress have tried to do over the several -- past several months. During that time, we’ve

³⁷³ Harrington, loc. cit.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Joondeph, loc. cit.

seen **Washington at its best and at its worst**. We've seen many in this chamber work tirelessly for the better part of this year to offer thoughtful ideas about how to achieve reform. Of the five committees asked to develop bills, four have completed their work and the Senate Finance Committee announced today that it will move forward next week. That has never happened before. Our overall efforts have been supported by an **unprecedented coalition** of doctors and nurses, hospitals, seniors' groups, and even drug companies -- many of whom opposed reform in the past.”³⁷⁷

Skocpol analyzes the effect of this speech in particular:

“The September speech slightly improved the standing of reform in national opinion polls, and nudged Congressional committees back to work. Specifically, Obama successfully prodded Congress toward, in due course, jumping three critical hurdles: first, getting a bill out of the one remaining Congressional committee that had not acted, the Senate Finance Committee, which would finally act on October 14, 2009; second, getting a majority for the House bill passed on November 7, 2009; and third, assembling a “supermajority” of 60 Senators to enact comprehensive reform in the Senate on Christmas Eve.”³⁷⁸

³⁷⁷ Obama's Health Care Speech to Congress. September 9th, 2009.

³⁷⁸ Skocpol, op. cit. 54.

The fact that a coalition was formed is a real achievement. Reed Tuckson describes the usual scenario in Congress:

“If you want to actually get something done in Congress, what it's going to require are multiple different stakeholders who are all prepared to go for their second choice. What is frustrating is once you get beyond the moral outrage, what happens is that every sector – the private insurers, the manufacturers, small business, the advocates for individuals – everybody has got their own 18-point plan. And what we have learned, over and over again, when people get wedded to those fundamentals, **is you never get to the calculus of actual legislation that can get passed.**”³⁷⁹

The speeches make reference to elements of American exceptionalism when describing the hurdles in passing the Law, specifically, the idea of a common interest despite the great diversity of the people.

“You know, there are few tougher jobs in politics or government than leading one of our **legislative chambers**. In each chamber, there are men and women who come from different places and face different pressures, who reach different conclusions about the same things and feel deeply concerned about different things. By necessity, leaders have to speak to those different concerns. It isn't always tidy; it is almost never easy. But perhaps the greatest -- and

³⁷⁹ Tuckson in *Charles D. Baker*.

most difficult -- challenge is to cobble together out of those differences the sense of **common interest and common purpose** that's required **to advance the dreams of all people -- especially in a country as large and diverse as ours.** [...] Our presence here today is remarkable and improbable. With all the punditry, all of the lobbying, all of the game-playing that passes for governing in Washington, it's been easy at times to doubt our **ability to do such a big thing**, such a complicated thing; to wonder if there are limits to what we, as a people, can still achieve. It's easy to succumb to the **sense of cynicism about what's possible in this country.**"³⁸⁰

Again, when the Supreme Court established the constitutionality of the PPACA, the President made reference to the difficult "political battles" fought in the past:

"The highest Court in the land has now spoken. We will continue **to implement** this law. And we'll work together **to improve** on it where we can. But what we won't do -- what the country can't afford to do - is refight the **political battles** of two years ago, or go back to the way things were."³⁸¹

³⁸⁰ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT

³⁸¹ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room, June 28th, 2010. 12:15 P.M. EDT

He made typical references to American exceptionalism on the speech he gave when the law was finally passed. He starts by praising the officials in charge of the reform since it has been possible thanks to their hard work; he also makes special reference to the joint effort of all Americans since in America every citizen has a real saying in matters of common interest. The reform, it follows, is worthy of a great people, the American people:

“I want to thank every member of Congress who stood up tonight with courage and conviction to make health care reform a reality. And I know this wasn’t an easy vote for a lot of people. But it was the right vote. I want to thank **Speaker Nancy Pelosi** for her extraordinary leadership, and **Majority Leader Steny Hoyer** and **Majority Whip Jim Clyburn** for their commitment to getting the job done. I want to thank my outstanding **Vice President, Joe Biden**, and my wonderful **Secretary of Health and Human Services, Kathleen Sebelius**, for their fantastic work on this issue. I want to thank the many staffers in Congress, and my own incredible staff in the White House, who have worked tirelessly over the past year with **Americans of all walks of life to forge a reform package finally worthy of the people we were sent here to serve. Today’s vote answers the dreams of so many who have fought for this reform.**”³⁸²

³⁸² Obama Makes Remarks After House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21, 2010.

The speech provides examples of how the help coming from regular citizens took shape. He also makes a religious reference when he mentions the power of prayers of the faithful American:

“To every unsung American who took the time to sit down and write a letter or type out an e-mail hoping your voice would be heard -- it has been heard tonight. To the untold numbers who knocked on doors and made phone calls, who organized and mobilized out of a firm conviction that **change in this country comes not from the top down, but from the bottom up -- let me reaffirm that conviction: This moment is possible because of you. Most importantly, today’s vote answers **the prayers of every American** who has hoped deeply for something to be done about **a health care system that works for insurance companies, but not for ordinary people.**”³⁸³**

Obama wants to highlight the fact that regardless of the instrumentalization made by politicians, the law is to bring on fundamental changes to the situation of health care in America and thus is bound to affect millions of Americans:

“For most Americans, this debate has never been about abstractions, the fight between right and left, Republican and Democrat -- it’s always been about something far more personal.

³⁸³ Ibid.

It's about every American who knows the shock of opening an envelope to see that their premiums just shot up again when times are already tough enough. **It's about every parent** who knows the desperation of trying to cover a child with a chronic illness only to be told "no" again and again and again. **It's about every small business owner** forced to choose between insuring employees and staying open for business. They are why we committed ourselves to this cause. Tonight's vote is not a victory for any one party -- it's a victory for them. **It's a victory for the American people. And it's a victory for common sense.**"³⁸⁴

He addresses those who have tried to make of his reform another failure and mentions past failures throughout history.³⁸⁵ He provides an answer to counter the arguments used by opponents, arguments belonging to American exceptionalism. Besides, the PPACA provides a government insurance option (exchanges).³⁸⁶

"Now, it probably goes without saying that tonight's vote will give rise to a frenzy of instant analysis. There will be tallies of Washington winners and losers, predictions about what it means for Democrats and Republicans, for my poll numbers, for my administration. But long after the debate fades away and the prognostication fades

³⁸⁴ Obama Makes Remarks After House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21, 2010.

³⁸⁵ Chapter 3 provides a summary of such attempts.

³⁸⁶ See chapter 8.

away and the dust settles, **what will remain standing is not the government-run system** some feared, or **the status quo that serves the interests of the insurance industry**, but a health care system that incorporates ideas from both parties -- **a system that works better for the American people.**³⁸⁷

Again, he praises his team of officials when he makes reference to the Act that reformed the PPACA:

- I want to commend **Senator Harry Reid**, extraordinary work that he did; **Speaker Pelosi** for her extraordinary leadership and dedication. Having passed reform bills in both the House and the Senate, we now have to take up the last and most important step and reach an agreement on a final reform bill³⁸⁸ that I can sign into law. And I look forward to working with members of Congress in both chambers over the coming weeks to do exactly that.³⁸⁹
- “And we are blessed by leaders in each chamber who not only do their jobs very well but who never lost sight of that larger mission. They didn’t play for the short term; they didn’t play to the polls or to politics: one of the best speakers the House of Representatives has ever had, **Speaker Nancy Pelosi**. [...] One of the best majority

³⁸⁷ March 21st, 2010. Washington, D.C. Ibid.

³⁸⁸ The HCERA, a.k.a. Reconciliation bill.

³⁸⁹ Remarks by the President on Senate Passage of Health Insurance Reform. State Dining Room. Washington, D.C. December 24th, 2009. 8:47 A.M. EST.

leaders the Senate has ever had, **Mr. Harry Reid**. To all of the terrific committee chairs, all the members of Congress who did what was difficult, but did what was right, and passed health care reform - - not just this generation of Americans will thank you, but **the next generation of Americans** will thank you. And of course, this victory was also made possible by the painstaking work of members of this administration, including our outstanding Secretary of Health and Human Services, **Kathleen Sebelius** and one of the unsung heroes of this effort, an extraordinary woman who led the reform effort from the White House, **Nancy-Ann DeParle**.³⁹⁰

Vicepresident Biden's words the day the PPACA was signed by the President constitute an ensemble of typical American exceptionalism rhetorical references: it was indeed a historical day that became true thanks to the incumbent administration:

"Mr. President, I think we got a happy room here. It seems ridiculous to say thank you all for being here. Ladies and gentlemen, to state the obvious, **this is a historic day**. In our business you use that phrase a lot, but I can't think of a day in the 37 years that I've been a United States senator³⁹¹ and the short time I've been Vice President that it is more appropriately stated. **This is a historic day**. And

³⁹⁰ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

³⁹¹ Senator from Delaware
whitehouse.gov/administration/vice-president-biden

history -- history is not merely what is printed in textbooks. It doesn't begin or end with the stroke of a pen. **History is made.**

History is made when men and women decide that there is a greater risk in accepting a situation that we cannot bear than in steeling our spine and embracing the promise of change. That's when **history is made.**

History is made when you all assembled here today, members of Congress, take charge to change the lives of **tens of millions of Americans.** Through the efforts of those of us lucky enough to serve here in this town, that's exactly what you've done. You've made history.

History is made when a leader steps up, stays true to his values, and charts a fundamentally different course for the country.

History is made when a leader's passion --passion-- is matched with principle to set a new course. Well, ladies and gentlemen, Mr. President, you are that leader. [...] Mr. President, you are -- to repeat myself -- literally about to make history. Our children and our grandchildren, they're going to grow up knowing that a man named Barack Obama put the final girder in the framework for a **social network** in this country **to provide the single most important element of what people need** -- and that is **access to good health** -- and that every American from this day forward will be treated with **simple fairness and basic justice.**"³⁹²

³⁹² Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

The President replies using equal terms:

“Today, after almost a century of trying; today, after over a year of debate; today, after all the votes have been tallied – **health insurance reform becomes law in the United States of America.** Today. It is fitting that Congress passed this **historic legislation this week.** For as we mark the turning of spring, we also mark a new season in America. In a few moments, when I sign this bill, all of the overheated rhetoric over reform will finally confront the reality of reform.”³⁹³

Obama is, of course, aware of the historical relevance of reform. In the following excerpt he specifies why the PPACA is such paramount piece of legislation:

“Good morning, everybody. In a historic vote that took place this morning members of the Senate joined their colleagues in the House of Representatives to pass a **landmark health insurance reform package** -- legislation that brings us toward the end of a **nearly century-long struggle to reform America’s health care system.** [...] As I’ve said before, these are not small reforms; these are big reforms. If passed, this will be **the most important piece**

³⁹³ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. Washington, D.C. East Room. March 23rd, 2010. 11:29 A.M. EDT.

of social policy since the Social Security Act in the 1930s, and the most important reform of our health care system since Medicare passed in the 1960s.”³⁹⁴

This idea is further explored by Adashi who highlights the fact that as all other paramount laws preeeding the PPACA, the latter will have to further pass the Supreme Court hurdle: **“the ACA is hardly without precedent.** Indeed, both the Social Security act of 1935³⁹⁵ and the Civil Rights act of 1964 endured and survived constitutional challenges. A more ominous analogue, the popular Medicare catastrophic coverage act of 1988,³⁹⁶ succumbed to a rare and humbling review³⁹⁷ a short year after its enactment.”³⁹⁸

The fact that the PPACA took so long and so much to get passed, that it had to overcome the constitutional hurdle that the Supreme Court entails, that it is compared to the Social Security Act, the Civil Rights Act

³⁹⁴ Remarks by the President on Senate Passage of Health Insurance Reform. State Dining Room. Washington, D.C. December 24th, 2009. 8:47 A.M. EST.

³⁹⁵ For a copy of the Act visit: www.ssa.gov/history/35act.html

³⁹⁶ Medicare Catastrophic Coverage Act of 1988. PL 100-360. This law added catastrophic coverage to Medicare. Benefits “ranged from prescription drug coverage to hospice care, from care in skilled-nursing facilities to mandates to the states to expand care for the Medicare poor, as well as to expand Medicaid coverage to low-income pregnant women and children.” Funigiello, op. cit. p. 197.

³⁹⁷ Review brought on by the Medicare Catastrophic Coverage Repeal Act of 1989. “The following year (1989), the administration of George H. W. Bush, President Reagan’s successor, just as quickly repealed the law.” Loc. cit.

³⁹⁸ Eli Y. Adashi, “The Affordable Care Act: Facing Up to the Power of the Pen and the Purse” in *The American Journal of Medicine*, vol. 124 (3) Elsevier, 1 March 2011.

and Medicare serve as excellent proof of the paramount importance of this law.

6.4 Reactions When PPACA Was Passed. The Outcome.

6.4.1 Praise of the PPACA

The following quotations serve as good examples of the many ways in which the PPACA was praised by experts on the matter:

- a. **“Comprehensive health care reform** has been an elusive goal of many US presidents. However, in 2010 President Barack Obama was instrumental in promulgating legislation that many argue will go along ways towards achieving that goal. [...] Although President Obama was successful in promulgating such a **historic piece of legislation**, recent court challenges have raised questions regarding the constitutionality of some provisions within the act.”³⁹⁹
- b. **“The most significant social legislation in the United States since the enactment of Medicare and Medicaid in 1965.”**⁴⁰⁰

³⁹⁹ Odom, *Obamacare*, op. cit., p. 2011.

⁴⁰⁰ Harrington, Scott E., “U.S. Health-Care Reform: The Patient Protection and Affordable Care Act”, *Journal of Risk and Insurance*, Vol. 77, No. 3, September 2010.

- c. “This administration is the first to pass such an **enormous change in health care through Congress**, and the world will be watching to see what happens next.”⁴⁰¹
- d. “He became the first President to successfully pursue an agenda of universal health care that culminated in the passage of **the most significant piece of comprehensive health care legislation in our nation’s history**.”⁴⁰²
- e. “The Patient protection and Affordable Care Act signed into law in March 2010, has led to **sweeping changes to the US health care system**.”⁴⁰³
- f. “The passage of the Patient Protection and Affordable Care Act of 2010 earlier this year marked the beginning of an **historic overhaul of the health care system in the United States**. The Act, along with its companion legislation, the Health Care and Education Reconciliation Act of 2010, will have a significant impact on health care providers.”⁴⁰⁴
- g. “On March 23, 2010, President Obama signed into law Public Law 111-148, better known as the Patient Protection and Affordable Care Act (or the PPACA). Whatever its merits as a matter of policy, it was **a historic legislative achievement**. No prior administration had successfully pushed national health reform through Congress, despite several attempts,

⁴⁰¹ Odom, *Obamacare*, op. cit., p. 2011.

⁴⁰² Ibid.

⁴⁰³ Marcus, op. cit., p. 927.

⁴⁰⁴ Coy, op. cit., p. 26.

and Obama had largely staked his presidency on its passage. Understandably, the mood at the acts signing ceremony was festive, even raucous.”⁴⁰⁵

- h. “Throughout his campaign for the presidency of the US, presidential candidate Barack Obama made **universal health care a cornerstone of his presidential platform**. When elected President of the US, he embarked on an **ambitious journey** to bring about comprehensive change to a health care system that historically relied on incremental change to address the challenges of cost, access, and quality. President Obama’s health reform initiative was signed into law as the Patient Protection and Affordability Care Act of 2010 (PPACA) and **became the most comprehensive change in healthcare legislation since the Social Security Amendments that resulted in the creation of the government payers Medicare and Medicaid**.”⁴⁰⁶
- i. Baker focuses on saving **costs**: “To remedy the national problems of rising health care costs, Congress enacted the PPACA with the prediction that it would result in a net reduction in federal budget deficits of \$104,000,000,000 over the 2010-2019 period.”⁴⁰⁷

⁴⁰⁵ Joondeph, op. cit., p. 2010.

⁴⁰⁶ Odom, *Obamacare*, op. cit., p. 2011.

⁴⁰⁷ Arthur J. R. Baker, op. cit., p. 272.

6.4.2 Criticism of the PPACA

PPACA's critics were quick to come up with alleged flaws:

- a. Berman focuses on the **prospective bad effects of the PPACA**: "PPACA will provide health insurance to 34 million additional Americans by 2021. This will increase the percentage of non-elderly Americans with health insurance from the current rate of 83 percent to 95 percent."⁴⁰⁸ In other words, the individual mandate will in effect increase the costs⁴⁰⁹ since the mandate entails an increase in the number of people entitled to health care.
- b. "The PPACA, the **biggest comprehensive health reform bill in our nation's history**, is highly criticized for trying to solve all present and future problems of health care in America. The PPACA will spend billions of dollars throughout the health care sector in an effort to change what is now being called a 'sick-care system', **but will it work?**"⁴¹⁰
- c. George expected more from the PPACA: it's an **underachievement**, a mere Band-Aid that addresses some of the inequities and abuses of health care system: "The urgency to reform is to broaden coverage, expand access, and improve

⁴⁰⁸ Berman, loc. cit.

⁴⁰⁹ Costs were examined in chapter 3.

⁴¹⁰ Quadagno, op. cit., p. 2011.

the quality of health care while curbing the rising cost of health care. [...] The House of Representatives introduced its Health Care Reform Bill that is labelled America's Affordable Health Choices Act. It seeks to provide affordable health care for all Americans and curb medical expenses growth by offering coverage and choice, affordability, shared responsibility, prevention and wellness measures, and workforce investments. However, the proposed health care reform bill H. R. 3200 **does not address key issues** that escalate the cost of health care, including the threat of medical liability, the lack of patient accountability, and the absence of performance measures in delivery of care.”⁴¹¹

- d. Pariser highlights specific shortcomings of the Law: “In the American system of free enterprise, the primary purpose of any private for-profit company is to provide a return on investment for its stockholders. This should not be the case of insurance companies, which are providing a basic right of citizens. To achieve the **goal of universal coverage** and yet be competitive in the marketplace, there need to be controls of the cost of care, which would ideally be accomplished by a unified **single-payer**⁴¹² **government-operated or –regulated system or at least by a public option of insurance** that would be able to

⁴¹¹ George, op. cit.

⁴¹² “In order to provide universal health coverage, single payer systems use a unified public payer [...] to pay the bills for people’s health costs, rather than processing payments through a patchwork of private insurers.” Skocpol, op. cit. 189.

prevail in the marketplace by charging smaller premiums than private for-profit companies. That way, the benefits provided could be regulated and controlled and there would be no need to pay stockholder profits and huge bonuses for senior insurance company executives, another **blatantly unethical practice**. Although ACA does not currently provide for a single-payer system or a public option, these goals should be strived for in the **future**. Also, for the system to function properly, everyone, particularly the young and healthy who do not consume as many services, must be required to purchase insurance and to be in the system to further spread the costs.”⁴¹³

Jacobs and Skocpol assert that Obama was punished for not including a public option in the PPACA: “he was castigated for compromising away major features like the ‘public option’.” ⁴¹⁴ He “danced around the ‘public option,’ repeatedly, praising the notion that Americans should be able to choose between private and public insurance options, but without drawing any ‘line in the sand’ about what eventual reform legislation

⁴¹³ Pariser, loc. cit.

The HCERA did provide in the end a public option. Furthermore, the mandate ensures that the “young and healthy”, a.k.a. the invincibles are in the system. Besides, the under-26 will be covered by their parents according to Section 2714 of the Law: “SEC. 2714. EXTENSION OF DEPENDENT COVERAGE.

(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age. Nothing in this section shall require a health plan or a health insurance issuer described in the preceding sentence to make coverage available for a child of a child receiving dependent coverage. *As revised by section 2301(b) of HCERA.*”

⁴¹⁴ Jacobs and Skocpol, op. cit., p. 55.

would have to include.”⁴¹⁵ Nonetheless, it was included in the Reconciliation Act; Lawrence and Skocpol acknowledge this: “A national public option was not included in the final version of the 2010 health care reform legislation, though the new law makes it possible for states to choose to establish one or another variant of public options.”⁴¹⁶

The Supreme Court’s decision upholding the PPACA also sparked controversy:

- Some belittled the importance of such decision given the crude reality that came from facts: “The Supreme Court decision solves nothing. It is true that had the Supreme Court ruled against the individual mandate and the ACA, health care would have returned to an even more expensive and convoluted state that is now. But even with the ACA in place, there are still many difficult healthcare problems and decisions that need to be addressed in order to make health care comprehensive, permanent and cost-effective. **There is not enough money to give everyone an unlimited supply of healthcare.** We are going to need to determine who decides which treatments and technologies are appropriate, where to spend your health care dollars and sadly, who doesn't get them.”⁴¹⁷

⁴¹⁵ Ibid., p. 36.

⁴¹⁶ Ibid., p. 188.

⁴¹⁷ Berman, loc. cit.

- Others commented on the political importance of the decision and the different construction depending on the political affiliation: “How you view **the Supreme Court’s decision** in the Patient Protection and Affordable Care Act, also known Obamacare, depends on which political party you most closely align yourself with. If you’re a Democrat, this will present a great victory, if you’re a Republican, this is a bitter disappointment. If you’re an independent, then you’re not really sure what it means. That’s been a problem with the ACA all along. It has been one of the most – if not the most – **politicised piece of legislation in American history**. From the beginning health care reform has been abducted by partisan rancour and hyperbole. **Thomas Jefferson** summarised essential freedoms in the Declaration of Independence as: ‘life, liberty and the pursuit of happiness,’ but we Americans have treated the essence of life – medical care- as a political football and a marketable commodity. The vast majority of Americans – Republicans, Democrats and independents – feel about our health system is overpriced and dysfunctional. The ACA was an attempt to correct some of the gross abuses of the system. However, our health care mess is so convoluted and just plain screwy that the ACA was itself convoluted and complex. The expression we use in medicine is: ‘The cure is as bad as the disease’.”⁴¹⁸

⁴¹⁸ Fieseher, loc. cit.

We have already seen⁴¹⁹ that Obama's response to this criticism is that something had to be done – the situation could not continue any further: "Our families, our businesses and our long-term fiscal health demands that we act and act now. Today, we are. And I'm grateful to all those who helped make this day possible."⁴²⁰

6.5 Implementation of the PPACA

Pundits examine the difficulties in passing the law and also the difficulties facing the implementation of the PPACA:

- a. "The fact is, there has never been a change like this in the history of the US in health care and society as a whole will have a difficult time **adjusting to comprehensive change**".⁴²¹
- b. "The **sweeping changes to be implemented** over the next few years by the Affordable Care Act (ACA) will have a profound effect on how health care is delivered and will subject society, providers, and patients to many new and different ethical dilemmas, challenges, relationships, and intended consequences."⁴²²

So does Obama:

⁴¹⁹ Chapter 3.

⁴²⁰ Obama Addresses Seniors and Prescription Drugs. Diplomatic Reception Room – White House. Washington D.C. June 22nd, 2009.

⁴²¹ Odom, *Obamacare*, loc. cit.

⁴²² Ibid.

- a. "It will take **four years to implement** fully many of these reforms, because we need to implement them responsibly. We need to get this right. But a host of desperately needed reforms will take effect right away."⁴²³
- b. "It's time to bring this debate to a close and begin **the hard work of implementing this reform properly** on behalf of the American people. This year, and in years to come, we have a solemn responsibility to do it right."⁴²⁴
- c. "What I think the American people will want to continue is to see the law implemented and **carried out effectively** to answer their questions and, when we can, improve the bill as it is."⁴²⁵
- d. "And, you know, we are **implementing these reforms at what is a very difficult moment for our country**. When the administration came to office in January 2009, the economy was sinking to the bottom of the biggest economic downturn since the Great Depression."⁴²⁶
- e. "You know, we've been working, trying to reach out, with the help of everybody on this call, over the course of the last six months, as we're working to implement to bill. **It's been a slow process**. This is

⁴²³ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

⁴²⁴ Obama Makes Remarks After House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21, 2010.

⁴²⁵ Obama Holds Teleconference on the Affordable Care Act. September 21st, 2010.

⁴²⁶ Ibid.

a major fundamental reform. And it's a -- it's critically important to break apart the pieces of it. And that's what September 23rd is about. On the six-month anniversary, the critical consumer protections that are in the law go into effect. And breaking apart those consumer protections and educating people about how they'll protect their families, their businesses, their economic security, is an important piece of the process and helping people understand the law.”⁴²⁷

- f. “The highest Court in the land has now spoken. **We will continue to implement this law.** And we'll work together to improve on it where we can. But what we won't do -- what the country can't afford to do - - is refight the political battles of two years ago, or go back to the way things were. With today's announcement, it's time for us to move forward -- to implement and, where necessary, improve on this law. And now is the time to keep our focus on the most urgent challenge of our time: putting people back to work, paying down our debt, and building an economy where people can have confidence that if they work hard, they can get ahead.”⁴²⁸

6.6 Conclusion

By describing the context when the PPACA was passed, the hurdles it had to pass, the different opinion among academia on the final

⁴²⁷ Ibid.

⁴²⁸ Remarks by The President On Supreme Court Ruling on The Affordable Care Act. East Room. June 28th, 2012. 12:15 P.M. EDT.
“... if they work hard, they can get ahead” – in direct reference to the idea of America as the land of opportunities.

outcome and the prospective difficulties of its implementation, this chapter proves how controversial the PPACA has been right from the beginning and how the speeches reflect this controversy. It also frames the ensuing discussion which lies at the very core of such controversy: the individual mandate.

7 The Individual Mandate

The president's health care law is hurting our economy - driving up health costs and making it harder for small businesses to hire. On June 28, 2012, the U.S. Supreme Court ruled on the constitutionality of the president's law, determining that its controversial 'individual mandate' does not violate the Constitution because it is a tax. The Court's ruling underscores the urgency of repealing this harmful law in its entirety.

*John Boehner.*⁴²⁹ *Washington D. C. June 29th, 2009.*

7.1 Introduction

This chapter explores the concept of individual mandate; it analyses how it is used in the speeches; how the concept is developed by the law – how the relation individual mandate – universal coverage is established; and it explores its constitutionality: it is deciding whether the PPACA is constitutional or not when it becomes most evident that this decision depends on whether the individual mandate is against tradition, a tradition that has American exceptionalism at the core.

⁴²⁹ Current speaker of the House of Representatives, he led the Republican Party opposition when the PPACA was being discussed.
<http://boehner.house.gov/news/documentsingle.aspx?DocumentID=301716>

7.2 Reference to the Individual Mandate in the Speeches

Obama only once uses the word “mandate” in his speeches and he never uses the actual words “universal coverage”, i.e the ultimate goal that the mandate aims at attaining. He indirectly refers to the individual mandate when he makes reference to **personal responsibility**:

- a. “We ultimately included a provision in the Affordable Care Act that people who can afford to buy health insurance should take the **responsibility** to do so.”⁴³⁰ The number of uninsured is so high because free riders do not take **responsibility** for their own wellbeing.
- b. “Indeed, it is because I am confident **in our ability** to give people the ability to get insurance that I am open to a system where **every American bears responsibility for owning health insurance**, so long as we provide a hardship waiver for those who still can't afford it. The same is true for employers. While I believe **every business has a responsibility** to provide health insurance for its workers, small businesses that cannot afford it should receive an exemption. And small business workers and their families will be able to seek coverage in the Exchange⁴³¹ if their employer is not able to provide it.”⁴³²

⁴³⁰ Obama remarks on Supreme Court decision upholding health care law. Washington. D. C. June 28th, 2012.

⁴³¹ “Under the new health care reform, consumers will be able to shop on health insurance exchanges for competing health plans that meet or exceed common

- c. “It's a plan that asks **everyone to take responsibility** for meeting this challenge -- not just government, not just insurance companies, but everybody, including employers and individuals.”⁴³³

Instead of explicitly using the words “individual mandate” he focuses on the patients that are benefiting from the fact that coverage has been extended to them; the PPACA has extended entitlement to them. He either mentions particular cases of patients or refers to a specific group of the population (e.g. free riders, middle class families, the uninsured, young adults, the sick, women). A gathering of actual patients⁴³⁴ was organized to specify how the PPACA has made a difference in their lives, and to voice their gratitude to the administration for this; he also had the professionals in charge of implementing the PPACA explaining how a patient's description of how her/his life had changed had been made possible thanks to a particular section or benefit envisaged by the PPACA.

Good examples of reference made to **population groups** in relation to the PPACA are the following:⁴³⁵

standards. The exchanges will be administered by the states and will help arrange subsidies for small businesses and for low- and middle-income individuals, in order to make insurance plans affordable for them.” Jacobs and Skocpol, op. cit., p. 184.

⁴³² Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

⁴³³ Obama's Health Care Speech to Congress. September 9th, 2009.

⁴³⁴ Obama holds a teleconference on PPACA. Washington, D. C. September 21, 2010.

⁴³⁵ Remarks on Supreme Court decision upholding health care law. Washington D. C. June 28th, 2012.

- a. Free riders: “the Supreme Court also upheld the principle that people who can afford health insurance should take the **responsibility** to buy health insurance.”
- b. Middle class families: “All of this is happening because of the Affordable Care Act. These provisions provide common-sense protections for middle class families, and they enjoy broad popular support;”
- c. The sick: “If you’re sick, you’ll finally have the same chance to get quality, affordable health care as everyone else;”
- d. The uninsured: “Now, if you’re one of the 30 million Americans who don’t yet have health insurance, starting in 2014 this law will offer you an array of quality, affordable, private health insurance plans to choose from;”
- e. Young adults: “Young adults under the age of 26 are able to stay on their parent’s health care plans -- a provision that’s already helped 6 million young Americans;”
- f. Women: “They [i.e. insurance companies] won’t be able to charge you more just because you’re a woman. They won’t be able to bill you into bankruptcy.”⁴³⁶

He also uses examples of **specific cases** in his speeches to bring the law closer to the people. He’s explicit about this purpose:

⁴³⁶ “Women who are able to buy health insurance on the individual market often have to pay more than men for the same coverage, a practice known as gender rating. In the U.S., 92% of plans practice gender rating, with 56% even charging non-smoking women more for coverage than male smokers.” National Women’s Law Center. *Women and the Health Care Law in the United States*. Washington D.C. November 08, 2012.

“But rather than me do all the talking, I want to make sure that some people who have struggled in the past with the health care system have an opportunity to tell their story, because basically the reason we did this was because of the stories I had heard from folks like you all across the country. And I want to make sure that a couple of you have a chance to tell your stories before I take some questions.”⁴³⁷

They are examples of regular people since the PPACA is a reform that addresses the problems of the regular Joe Doe; they are representative of a group of patients who have become victims of the grievous practices used by insurance companies. Obama insists that their situation should have been exceptional in a country as wealthy and mighty as the United States.

Twice he makes reference to Natoma Canfield’s case, then to Ryan Smith’s, Marcelas Owen’s, Laura Klitzka, a man from Illinois, a man from Texas and himself, i.e. his mother and daughter:

- a. “There’s a framed letter that hangs in my office right now. It was sent to me during the health care debate by a woman named **Natoma Canfield**. For years and years, Natoma did everything right. She bought health insurance. She paid her premiums on time. But 18 years ago, Natoma was diagnosed with cancer. And even though

⁴³⁷ Obama Holds a Backyard Discussion on Health Care Reform and the Patient’s Bill of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

she'd been cancer-free for more than a decade, her insurance company kept jacking up her rates, year after year. And despite her desire to keep her coverage -- despite her fears that she would get sick again -- she had to surrender her health insurance, and was forced to hang her fortunes on chance. I carried Natoma's story with me every day of the fight to pass this law. It reminded me of **all the Americans, all across the country, who have had to worry not only about getting sick, but about the cost of getting well.**"⁴³⁸

- b. "I'm signing it for **Natoma Canfield**. Natoma had to give up her health coverage after **her rates were jacked up by more than 40 percent**. She was terrified that an illness would mean she'd lose the house that her parents built, so she gave up her insurance. Now she's lying in a hospital bed, as we speak, faced with just such an illness, praying that she can somehow afford to get well without insurance. Natoma's family is here today because Natoma can't be. And her sister Connie is here. Connie, stand up."⁴³⁹
- c. "I'm signing it **for Ryan Smith**, who's here today. He runs a small business with five employees. He's trying to do the right thing, paying half the cost of coverage for his workers. This bill will help him afford that coverage."⁴⁴⁰

⁴³⁸ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. Washington D. C. June 28th, 2012.

⁴³⁹ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

⁴⁴⁰ Ibid.

- d. “I’m signing it **for 11-year-old Marcelas Owens**, who’s also here.

Marcelas lost his mom to an illness. And she didn’t have insurance and couldn’t afford the care that she needed. So in her memory he has told her story across America so that no other children have to go through what his family has experienced.”⁴⁴¹

Marcelas Owens is the little boy who was standing next to the President when he signed the law.⁴⁴²

- e. “It is **unsustainable for Americans** like **Laura Klitzka**, a young mother I met in Wisconsin last week, who has learned that the breast cancer she thought she'd beaten had spread to her bones; who is now being forced to spend time worrying about how to cover the \$50,000 in medical debts she has already accumulated, when all she wants to do is spend time with her two children and focus on getting well. These are not worries a woman like Laura should have to face in a **nation as wealthy as ours**. Stories like Laura's are being told by women and men all across this country – by families who have seen out-of-pocket costs soar, and **premiums double over the last decade at a rate three times faster than wages**. This is forcing **Americans of all ages to go** without the checkups or prescriptions

⁴⁴¹ Ibid.

⁴⁴² The following is a direct link to the photo:
Gerald Smith. “NWFCO Celebrates New Health Care Law!” Northwest Federation of Community Organizations. Seattle. May 18, 2010.
<http://allianceforajustsociety.org/975/nwfc-celebrates-new-health-care-law/>

they need. It's creating a situation where a single illness can wipe out a lifetime of savings.”⁴⁴³

- f. “One man from Illinois lost his coverage in the middle of chemotherapy because his insurer found that he hadn't reported gallstones that he didn't even know about. They delayed his treatment, and he died because of it. Another woman, from Texas, was about to get a double mastectomy when her insurance company canceled her policy because she forgot to declare a case of acne. By the time she had her insurance reinstated, her breast cancer had more than doubled in size. That is heartbreaking, it is wrong, and **no one should be treated that way in the United States of America.**”⁴⁴⁴

He makes reference to his personal case (his mother, his children) – a means to empathise with the people:

- a. “Today, I'm signing this reform bill into law **on behalf of my mother**, who argued with insurance companies even as she battled cancer in her final days.”⁴⁴⁵

⁴⁴³ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

⁴⁴⁴ Obama's Health Care Speech to Congress. September 9th, 2009. That is, in a country as wealthy and mighty as the United States. I would add, or in any country which praises itself as being a bulwark against human rights abuse.

⁴⁴⁵ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

- b. "My mother died of ovarian cancer and she did not have steady health insurance during her life because she was essentially a self-employed consultant. And ovarian cancer is a tough cancer once you get it. It's tough mainly because it's typically diagnosed very late. Now, I can't say for certain that if she had been diagnosed earlier she might be with us here today, but I know that the fact that she did not have regular insurance meant that she was not getting the kinds of regular checkups that might have made a difference."⁴⁴⁶
- c. "Now, the flipside is when **Malia or Sasha** get a sniffle, or an ear infection, or a scrape, or a bruise, I'm over there just miserable. And I still remember Sasha, when she was three months old, one night she just wasn't crying right. As a parent, you start recognizing, that's not how she cries. She wasn't hungry, it wasn't a diaper change. Something was going on. [...] So we called our pediatrician, and he said, 'Well, why don't you bring her down?' And this was in the middle of the night. This is like one o'clock in the morning. And he was willing to see her, and he pressed on top of her head, and he said, 'You know, she may have meningitis; I want you to go to the emergency room.' And it turned out she had meningitis, and she had to get a spinal tap, and they had to keep her there for three or four days. And the doctor was talking about if this didn't -- if her temperature didn't come down and if we didn't solve this, she could have permanent damage to her hearing or other effects. But I still remember that feeling of just desperation, watching the nurse take

⁴⁴⁶ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

her away to provide treatment for her. But I was thinking, what if I hadn't had insurance? What if I was looking at my bank account and I didn't have the money to cover her? How would I be able to face my wife,⁴⁴⁷ and how would I be able to look in the mirror if I didn't feel like I could somehow make sure they were okay? And that's what this is about, ultimately. I mean, we've got to make sure that health care -- our health care dollars are used smartly. We've got to make the system work better for consumers. We've got to make it more responsive. But ultimately, the thing that's most important is, **we've just got to give people some basic peace of mind**. And I'm just so glad that I'm able to stand here before you and hear these stories, and hopefully it gives you a little more peace of mind. [...] So the **amount of vulnerability** that was out there was horrendous. And what I said to myself and what I said to my team was even as we were dealing with this big crisis -- immediate crisis with respect to the economy, we've got to start doing something to make sure that ordinary folks who are feeling insecure because of health care costs, that they get some relief.”⁴⁴⁸

⁴⁴⁷ Michelle Robinson is a top lawyer herself so she is bound to have felt the same about him: “How would I be able to face my husband?” They actually met at the Chicago-based law firm Sidley Austin.

⁴⁴⁸ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

He also had the team⁴⁴⁹ in charge of implementing the PPACA explaining the benefits of PPACA in a teleconference (“we have folks calling in from **every corner of our great land**”)⁴⁵⁰ taking questions from representatives of all faith and community leaders⁴⁵¹ in charge of getting the message through to their people. This in itself is revealing of the importance of religion in the United States. Religious congregations offer a direct link to the people and the kind of link that people would trust. These representatives are in direct contact with the people; they are in a position to explain (or not) the benefits of the law. Obama is aware of this and acts accordingly.

7.3 The Individual Mandate in the PPACA

The individual mandate is the most controversial⁴⁵² element of the PPACA,⁴⁵³ for the first time⁴⁵⁴ a piece of legislation establishes the need for

⁴⁴⁹ The professionals were Joshua DuBois, executive director of the White House Office for Faith-Based and Neighborhood Partnerships; Nancy-Ann DeParle, head of the White House Office of Health Reform; Alexia Kelley, director of the HHS Center for Faith-Based and Neighborhood Partnerships, or The Partnership Center; Kathleen Sebelius, HHS Secretary; Paul Monteiro, associate director of the White House Office of Public Engagement; Stephanie Cutter, assistant to the president; Mayra Álvarez, director of public health in the H.H. Office of Health Reform; and Melody Barnes, head of the White House Domestic Policy Council.

⁴⁵⁰ Words from Joshua DuBois, executive director of the White House Office for Faith-Based and Neighborhood Partnerships.

⁴⁵¹ The heads of religious communities were: Bishop Vashti McKenzie, of the AME Church; Reverend Peg Chamberlin, president of the National Council of Churches; Rabbi Steve Gutow, Jewish Council for Public Affairs; Gloria, PICO; Ingrid Mattson, from the Islamic Society of North America; Linda Walling, from Faithful Reform; Jennifer Beeson, from Families USA; Dr. David Gushee, from the New Evangelical Partnership for the Common Good; Reverend Cynthia Abrams, United Methodist Church Board of Church and Society.

every citizen of the United States to get some kind of insurance;⁴⁵⁵ it also specifies the consequence of not doing so.⁴⁵⁶ This is the exact wording of the Law:

Section 5000A – “CHAPTER 48—MAINTENANCE OF MINIMUM
ESSENTIAL COVERAGE

SEC. 5000A. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL
COVERAGE.

(a) REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL
COVERAGE. — An applicable individual shall for each month
beginning after 2013 ensure that the individual, and any dependent of

⁴⁵² “No provision of the PPACA has proven to be more contentious than the so-called ‘individual mandate’.” Parmet, op. cit., p. 401.

“The cornerstone of the PPACA is its requirement that individuals and employers purchase health insurance.” Held, op. cit., p.723.

“An individual mandate that everyone must have health care coverage is key to many of the health care reforms being discussed today, but it is also extremely politically controversial; [...] it’s one of the most controversial and politically difficult public policy initiatives to realize.” Cynthia Goff, “An Individual Mandate to Have Health Care Coverage: How Minnesota Can Turn This Key to Health Care Reform”, *Hamline Journal of Public Law and Policy*, 85, 2007 – 2008, p. 97.

⁴⁵³ “The minimum essential coverage provision known more widely as the ‘individual mandate’.” Peck, op. cit., p. 28.

⁴⁵⁴ “The individual mandate of the PPACA is a novel provision of federal law; [...] never before has the federal government required individuals to maintain health insurance.” Huhn, op. cit., p. 330.

⁴⁵⁵ Section 5000A(f) of the Internal Revenue Code of 1986 defines “minimum essential coverage” as “government-sponsored programmes, eligible employer-sponsored plans, plans in the individual market, certain grandfathered group health plans and other coverage as recognized by Health and Human Services (HHS) in coordination with the IRS.”

⁴⁵⁶ “If the minimum coverage provision takes effect as enacted, it will require many people with incomes above a certain level who do not get health coverage from their employers to buy a minimum level of health coverage or else pay a penalty.” Bellah, loc. cit.

Starting in 2014, the mandate will impose a **penalty** on non-exempt individuals who lack health insurance.” Parmet, op. cit., p. 401.

the individual who is an applicable individual, is covered under minimum essential coverage for such month.

(b) SHARED RESPONSIBILITY PAYMENT. — (1) IN GENERAL.—

Replaced by section 10106(b). If a taxpayer who is an applicable individual, or an applicable individual for whom the taxpayer is liable under paragraph (3), fails to meet the requirement of subsection (a) for 1 or more months,⁴⁵⁷ then, except as provided in subsection (e),⁴⁵⁸ there is hereby imposed on the taxpayer a **penalty**⁴⁵⁹ with respect to such failures in the amount determined under subsection (c).

Monahan calculates the exact figure: “If an individual has affordable coverage available to her and does not purchase coverage, she faces a **penalty** equal to the greater of (1) \$695 per person in her household, up to a maximum of \$2085 and (2) 2.5% of household income.” Op. cit., p. 788.

⁴⁵⁷ i.e. previous subsection (a) establishes the specific mandate.

⁴⁵⁸ (e) Section 4980H(b) of the Internal Revenue Code of 1986, as added by section 1513(a) of this Act, is amended to read as follows:

“(b) LARGE EMPLOYERS WITH WAITING PERIODS EXCEEDING 60 DAYS.—
“(1) IN GENERAL.—In the case of any applicable large employer which requires an extended waiting period to enrol in any minimum essential coverage under an employer-sponsored plan (as defined in section 5000A(f)(2)), there is hereby imposed on the employer an assessable payment of \$600 for each full-time employee of the employer to whom the extended waiting period applies.
“(2) EXTENDED WAITING PERIOD.—The term ‘extended waiting period’ means any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act) which exceeds 60 days.”

⁴⁵⁹ Such “penalty” is not a sanction but a tax, according to the Supreme Court. “In 2014 for adults will be the greater of one percent of income or \$95. Over time, the penalty will climb to the greater of \$695 or 2.5 percent of income up to the cost of the so-called ‘average bronze plan premiums’.” Parmet, op. cit., p. 402.

“The four levels of coverage - bronze, silver, gold and platinum - are based on actuarial value, a measure of the level of financial protection a health insurance policy offers.”

http://101.communitycatalyst.org/aca_provisions/coverage_tiers#bronzesilvergold

“Bronze-level coverage refers to a plan where the actuarial value of the benefits is equal to 60% of the full actuarial value of benefits provided under the plan.” Monahan, op. cit., p. 788.

7.4 The Individual Mandate and Universal Coverage

In accordance with the PPACA, the individual mandate is the means to attain universal coverage – it compels every citizen to get insurance in order to have every citizen covered (universal coverage).⁴⁶⁰ In effect, “the requirement [i.e. the mandate] achieves near-universal coverage by building upon and strengthening the private employer-based health insurance system, which covers 176,000,000 Americans nationwide.”⁴⁶¹

It is a fact that the controversy around the individual mandate and universal coverage has been at the centre of many discussions in Congress and the media. It is the individual mandate that made bargaining at Congress so difficult; it is the individual mandate that stands right at the centre of praise or criticism of the PPACA and the reform it envisages.

Whether the individual mandate is an absolutely essential tool to reform health care is a controversial issue. Not everybody agrees that a mandate is in place, that a mandate by government should be enforced on free citizens, that a mandate is the best American tool to attain universal coverage: “The ACA may be viewed as a significant positive step toward providing nearly universal coverage to the population and curbing insurance company abuses or the ACA may be viewed as a takeover, reorganisation,

⁴⁶⁰ Naturally, the law envisages exceptions. “There will be a hardship waiver for those individuals who still can’t afford coverage, and 95 percent of all small businesses, because of their size and narrow profit margin, would be exempt from these requirements.” President Obama’s Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

⁴⁶¹ Parmet, op. cit., p. 401.

and destruction by the government of the best health care system in the world.”⁴⁶²

By the time PPACA was passed, scholars were already divided: some praised the law and hailed it as a groundbreaking achievement – something presidents before the incumbent had tried and failed; others, quite on the contrary, saw it as the dawn, the destruction of health care, very much in tune with Congressman Beiner’s position.⁴⁶³ The PPACA generally **won the approval of liberals** (egalitarians and predominantly Democrats), although many contended that it was not sufficiently extensive; and it was vehemently **opposed by most economic conservatives** (individualists and predominantly Republicans), who tried to repeal it either through legislative action or judicial decree. Failing in these efforts, they sought to block funding for the bill and raise implementation problems in the various states. Social conservatives fell on different sides in the dispute.

Proponents of the mandate argue [that] a mandate is necessary to achieve universal coverage. The individual mandate aims at **universal coverage or rather “universal coverage can only be achieved through an individual mandate**. Many Republicans, Democrats, conservatives, and liberals share the notion that if we desire universal health coverage, the only practical way to get there is through a requirement that all persons secure health insurance, with publicly-funded premium assistance for those who cannot afford it.”⁴⁶⁴

⁴⁶² Pariser, loc. cit.

⁴⁶³ See quote at the beginning of this chapter.

⁴⁶⁴ Pitsenberger, op. cit., p. 145.

The mandate is therefore essential to ensure near universal coverage. Hoffman summarizes the position of enthusiasts of the mandate: “The individual mandate has been held up as the ‘American’ way to achieve universal coverage, where every citizen can choose his own insurance and commercial insurers can compete for profit. By laying claims to coverage, choice, and competition, the mandate has garnered a strong and diverse set of supporters.”⁴⁶⁵

Opponents claim that the mandate is a very expensive way to pursue only modest gains in coverage and an unacceptable insult to individual autonomy. Those in favour of the mandate reply to this criticism by claiming that the goal of the **individual mandate** is not “to force Americans into buying health insurance products that they may not need in the health care marketplace.”⁴⁶⁶ It aims rather at **changing the current situation**, i.e. to alleviate the negative public health and economic consequences of a **systemic lack of access** to essential health services.

All in all, enforcing the individual mandate is meant to put an end to the exceptionality that the nation suffers from not having a system of health care that includes all citizens:

- “The national ‘market’ at stake in the PPACA is not simply the health insurance or health care markets [...] but also the larger economy that is inextricably tied to the health of the public. [...] Uninsured persons’ lack of access is directly tied to **negative health outcomes**

⁴⁶⁵ Hoffman, *Oil and Water*, op. cit., p. 9.

⁴⁶⁶ Hodgson, op. cit., p. 298.

across the population. And poor public health outcomes tied to lack of access have a staggering economic toll.”⁴⁶⁷

- “The mandate can help smooth an individual’s spending for health care over a lifetime. [...] Americans today go to **extreme measures** to pay for medical care and sometimes end up filing for bankruptcy or in other financial distress.”⁴⁶⁸

And so it follows that the different arguments used to overrule the individual mandate as unconstitutional are regarded as petty in the context of changing an unfair situation such as the one described. All the unrealistic concerns have been used in the name of “basic libertarian concerns;”⁴⁶⁹ they have been described as “**slippery slope**” **arguments.** ⁴⁷⁰ The founders themselves deemed this sort of arguments as unrealistic:⁴⁷¹ in reference to the establishment of a militia, Hamilton asserts:

“There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia [composed of fellow citizens], that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like **the paradoxes of rhetoricians**; as a disingenuous artifice to instil prejudices of any

⁴⁶⁷ Ibid.

⁴⁶⁸ Hoffman, *Oil and Water*, op. cit., p. 31.

⁴⁶⁹ Hall, op. cit. p. 1866, 1868, 1871.

⁴⁷⁰ Ibid.

⁴⁷¹ “The founders, in terms still relevant today, sometimes scorned those who reasoned in this fashion.” Hall, op. cit., p. 1869.

price; or as the serious offspring of political fanaticism. [...] Do the persons who rave at this rate imagine that their art or their eloquence can impose any conceits or absurdities upon the people of America...?”⁴⁷²

The PPACA’s individual mandate is founded then on the need to make health care accessible, hence the name of the Law: “It enables more people to acquire medical-care insurance protection. Across a four-year period, it progressively prohibits persons being denied coverage for preexisting conditions. And it has ended lifetime limits on coverage.”⁴⁷³

Apart from this ethical argument, the PPACA’s mandate is founded as well on **financial reasons**, i.e. to reduce the costs of the current system. Scholars agree on this key point:

- “Few domestic issues dominate today’s headlines as much as the **high cost of health care**.”⁴⁷⁴
- “The intended purpose of this role is to lower the overall costs of providing care per individual.”⁴⁷⁵
- “The legislation aims to restrain the growth in health care costs;”⁴⁷⁶

⁴⁷² *The Federalist* No. 29, supra note 135, at 181-83 (Alexander Hamilton).

⁴⁷³ Lockhart, op. cit., p. 206.

⁴⁷⁴ Funigiello, *Chronic Politics*, op. cit., 2005.

⁴⁷⁵ Odom, *Obamacare*, op. cit., 2011.

⁴⁷⁶ D. A. Axelrod, D. Millman, and M. M. Abecassis, “US Health Care Reform and Transplantation, Part II: Impact on the Public Sector and Novel Health Care Delivery Systems”, *American Journal of Transplantation*, 2010.

- “In Washington, the aim of health-care reform is not just to **extend medical coverage** to everybody but also to **bring costs under control**. Spending on doctors,⁴⁷⁷ hospitals, drugs, and the like now consumes more than one of every six dollars we earn. The financial burden has damaged the global competitiveness of American businesses and bankrupted million of families, even those with insurance. It’s also devouring our government.”⁴⁷⁸

Both goals, i.e. universal coverage and reducing costs are closely linked: “Requiring individuals to obtain insurance unquestionably regulates the interstate health-insurance and health-care markets, both of them in existence well before the enactment of the ACA.”⁴⁷⁹

The strongest argument against the PPACA and universal coverage is the **high price of the reform**, i.e. not only the PPACA will not reduce the existing deficit, it will increase the overall costs and the deficit. Oberlander however, thinks the price to pay is not excessive:

⁴⁷⁷ “Our costly health care system is unsustainable for doctors like Michael Kahn in New Hampshire, who, as he puts it, spends 20 percent of each day supervising a staff explaining insurance problems to patients, completing authorization forms, and writing appeal letters; a routine that he calls disruptive and distracting, giving him less time to do what he became a doctor to do and actually care for his patients.”
Obama’s Speech on Health Care Reform at the American Medical Association’s Annual Conference, as Released by the White House. Washington, D.C. June 15, 2009.

⁴⁷⁸ Atul Gawande, “The Cost Conundrum. What a Texas town can teach us about health care”, *Annals of Medicine*, *The New Yorker*, June 1, 2009.

⁴⁷⁹ Secretary Sebelius.

“The pricetag for universal coverage really is not that much. If you talk about adding the uninsured to the existing system, you're talking about roughly \$100 billion a year. We already spent over \$2 trillion so it's a mark-up but not much. When we cut taxes in 2001 and 2003, **we found the money to do that**. When we passed the Medicare Prescription Drug Benefit in 2003,⁴⁸⁰ **we found the money to do that**. When we went to war in Iraq, **we found the money to do that**. So this is a question of priorities. And uninsured are not a political priority.”

7.5 The Individual Mandate and American Exceptionalism

This section shows that to get a better understanding of American exceptionalism in healthcare it is necessary to analyse the individual mandate in the PPACA and explore ways in which they are related. The PPACA's individual mandate has served to question values regarded before its passing as carved in stone regardless of circumstances; it has been used to question and demand a **reconsideration of both the values and morals that the American people hold intrinsically “American”⁴⁸¹ and “some of the deepest and most contested questions concerning the Constitution.”⁴⁸²** At the core of the PPACA's reform lies the individual

⁴⁸⁰ Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, Stat. 2066, Dec. 8, 2003.

⁴⁸¹ “It is no exaggeration to say that it even implicates questions about who we are.” Brennan, op. cit., p. 1624.

⁴⁸² Ibid.

mandate; and at the core of the individual mandate lies concepts of American exceptionalism.

Indeed, “the topic has an appeal beyond the usual scholarly audience.”⁴⁸³ The controversy goes beyond politics into the practical arena of American exceptionalism: the debate is closely linked to concepts pertaining to **American exceptionalism**.

For the first time, for instance, **the right of every citizen to health care** has been put in writing.⁴⁸⁴ This fact in itself is good enough for some to consider that the PPACA is against tradition; never before had healthcare been considered a right to which citizens are entitled to. Naturally, those in favour of the PPACA consider this fact a real achievement.

A good example of the latter view are Vicepresident Biden’s words:

“You have turned, Mr. President, the right of every American to have access to decent health care into reality for the first time in American history. [...] And we have now just enshrined, as soon as I sign this bill, the core principle that everybody should have some basic security when it comes to their health care. And it is an extraordinary achievement that has happened because of all of you and all the advocates all across the country. Look, the classic poet, Virgil, once said that ‘The greatest wealth is health.’ The greatest wealth is health. Well, today, America becomes a whole lot

⁴⁸³ Wrobel, op. cit., p. vii.

⁴⁸⁴ This issue will be further explained in chapter 10.

wealthier because tens of millions of Americans will be a whole lot healthier from this moment on.⁴⁸⁵

President Obama follows suit by adding that the achievement is owed to **the character of the American people**:

“The bill I’m signing will set in motion reforms that generations of Americans have fought for, and marched for, and hungered to see. [...] That our generation is able to succeed in passing this reform is a testament to the **persistence – and the character – of the American people**, who championed this cause; who mobilized; who organized; who believed that people who love this country can change it. It’s also a testament to the **historic leadership – and uncommon courage** – of the men and women of the United States Congress, who’ve taken their lumps during this difficult debate.”⁴⁸⁶

He does the same in this speech and quotes none other than Lincoln:

“Good evening, everybody. Tonight, **after nearly 100 years of talk and frustration, after decades of trying, and a year of sustained effort and debate**, the United States Congress finally

⁴⁸⁵ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

⁴⁸⁶ Ibid.

declared that America's workers and America's families and America's small businesses deserve the security of knowing that here, in this country, neither illness nor accident should endanger the dreams they've worked a lifetime to achieve. Tonight, at a time when the pundits said it was no longer possible, we rose above the weight of our politics. We pushed back on the undue influence of special interests. We didn't give in to mistrust or to cynicism or to fear. Instead, we proved that **we are still a people capable of doing big things and tackling our biggest challenges. We proved that this government -- a government of the people and by the people**⁴⁸⁷ **-- still works for the people.**⁴⁸⁸

The following sections explore the arguments used by either party to fight for the un/constitutionality of the individual mandate.

⁴⁸⁷ In direct reference to the Gettysburg Address, 1863:

"It is rather for us to be here dedicated to the great task remaining before us -- that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion -- that we here highly resolve that these dead shall not have died in vain -- that this nation, under God, shall have a new birth of freedom -- and that **government of the people, by the people, for the people**, shall not perish from the earth."

The Collected Works of Abraham Lincoln, The Abraham Lincoln Association, 2006.
<http://quod.lib.umich.edu//lincoln/>

⁴⁸⁸ Obama Makes Remarks after House Passes Health-Care Legislation. Washington, D.C. East Room. White House. March 21st, 2010.

7.6 Constitutionality of the Individual Mandate. What's the Beef?

Four are the main questions⁴⁸⁹ that the Supreme Court was asked to decide upon but the one that is closely linked to American exceptionalism is precisely that of the individual mandate, i.e. “the requirement that every citizen purchase health-care insurance or be brought under the state health-care umbrella provided by government.”⁴⁹⁰

The constitutionality of the individual mandate was also at the crux⁴⁹¹ of the challenges⁴⁹² submitted by several states⁴⁹³ against the PPACA. The Obama Administration acknowledged this in the brief for *Florida et al. v. US Department of Health and Human Services*,⁴⁹⁴ where it was argued that the mandate was the **core element of the law**. In this

⁴⁸⁹ “The Court has chosen, and chosen wisely, to go beyond [the individual mandate] and consider the questions of when in the course of its implementation the law can be challenged; whether it can survive if some of its parts are deemed unconstitutional [i.e. whether it is severable]; and the legal implications of the law's vast expansion of Medicaid, the health-care program for the poor.” Troy, op. cit., p. 20.

⁴⁹⁰ Ibid.

⁴⁹¹ “The individual mandate [...] is integral to the overall scheme.” Peck, op. cit., p. 31.

⁴⁹² “National health reform is threatened by multiple legal challenges grounded in constitutional law.” Hodge, *Upholding*, op. cit., p. 294.

⁴⁹³ “Soon after passage of the ACA, numerous states and interest groups filed suits challenging its legality. Supreme Court consideration was requested in five cases and the Supreme Court selected one case, *Florida v HHS*, brought by 26 states and the National Federation of Independent Business, for review.” Sheen, op. cit., p. 1735.

“The attorneys-general of more than half of the states and many private parties filed federal court actions challenging the mandate's constitutionality. [...] 26 states were in the Florida case and Virginia had its own case.” Parmet, op. cit., p. 401.

⁴⁹⁴ One of the first challenges against PPACA of January 31, 2011.

sense, Judge Vinson⁴⁹⁵ wrote the following in his ruling of January 31st, 2011: “The defendants concede that [the individual mandate] is absolutely necessary for the Act’s insurance market reforms to work as intended. In fact, they refer to it as an ‘essential’ part of the Act at least fourteen times in their motion to dismiss.”⁴⁹⁶ The Florida court bore in mind the doctrine of severability⁴⁹⁷ to strike down the PPACA, since compulsory insurance is the “keystone or lynchpin of the entire health reform effort.”⁴⁹⁸

7.6.1 The Scope of Congressional Powers

The debate on the constitutionality of the individual mandate has brought with it a debate on the scope of Congressional powers; the size of such scope depends on the interpretation of the Commerce and Necessary and Proper clauses. These clauses have been used to determine the boundaries between the power of the federation and the states; they have been construed to delineate the reach or extent of federal powers into the field of the states’ competences. Decisions by the Supreme Court on

⁴⁹⁵ Judge Vinson is a senior federal judge of the United States District Court for the Northern District of Florida.

⁴⁹⁶ *State of Florida et al. vs. United States Department of Health and Human Services et al.* (Case Number 3:2010-cv-00091-RV)

⁴⁹⁷ Severable statute: “A statute if after an invalid portion of it has been stricken down, that which remains is self-sustaining and capable of separate enforcement without regard to the stricken portion, in which case that which remains should be sustained. Op. cit. *Black’s Law Dictionary*.

⁴⁹⁸ *Florida ex rel. Bondi v. U.S. Department of Health & Human Services*, No. 10-0091, 2011 WL 285683, at 35 (N.D. Fla. Jan 31, 2011). The court uses a very clever metaphor to make their point: “this Act has been analogized to a finely crafted watch, and that seems to fit. It has approximately 450 separate pieces, but one essential piece [the individual mandate] is defective and must be removed. It cannot function as originally designed.”

Congressional powers run parallel to the conceptualization of federal v. state expansion. The Court may consider that Congress has opted for and erred in adopting a broad interpretation of the commerce clause which has resulted in an unacceptable trespassing of the power of the federation into the field of competences belonging to the states. Or, it may decide the contrary, i.e. Congress's use of the commerce clause has resulted in a necessary broadening of the scope of the federation which is essential in cases where it is obvious that action by each individual state cannot be as efficient as the comprehensive federal action. **The Supreme Court's decision on Obamacare reversed the opinion held till then by the Court on Congressional powers.**

7.6.2 Commerce, and Necessary and Proper Clauses

Challenges to the health care legislation have made use of the **Commerce Clause**⁴⁹⁹ and **"the ancillary"**⁵⁰⁰ **Necessary and Proper**

⁴⁹⁹ It is part of the original 1789 Constitution and gives Congress the right to regulated interstate commerce. Article I, Section 8 of the Constitution gives Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Clause 3). Congress has the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers..." (Clause 18).

"Its central function is to maintain an appropriate balance between federal and state authority. Maintaining that balance may indirectly protect individual liberty by countering the potential tyranny of an overly centralized government. [...] It may also promote democracy by ensuring political accountability through demarcation of federal and state authority (*United States v. Lopez*, Kennedy, J., concurring).

⁵⁰⁰ "In aid of its authority under the Commerce Clause, the Necessary and Proper Clause confers upon Congress the power to enact ancillary laws and regulations that are part of a broader legislative program regulating interstate commerce." Huhn, op. cit., p. 322.

Clauses.⁵⁰¹ In fact, of all the challenges to the PPACA, “the Commerce Clause challenges to the individual mandate are of greatest doctrinal importance.”⁵⁰²

The use of these clauses has merited close attention by scholars. Its use in the PPACA has been cause of much discussion. Hall even proposes “a guided tour” through the “maze of arguments”⁵⁰³ that has been put forward by the legislators, academia and ultimately, the High tribunal.

7.6.2.1 Use of the Clauses Throughout History

These clauses have been used expansively or deferentially depending on the **economic context**. In the **early 19th century** the Court⁵⁰⁴ defined them expansively:

“During and after the Civil War, the Federal Government greatly expanded its scope of operations: enacting an income tax, issuing paper currency, and undertaking great public projects including the

⁵⁰¹ The Constitution also gives Congress authority “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof” U. S. Constitution, article I, 8, clause 18. “In the particular context of PPACA to achieve Congress’s regulatory goal of requiring health insurers to accept all applicants regardless of health condition. [...] Also, there is no substantial dispute that this fundamental improvement in health insurance products and markets cannot be effectively accomplished without an accompanying coverage mandate.” Hall, op. cit., p. 1841.

⁵⁰² Baker, op. cit., p. 272.

⁵⁰³ Hall, loc. cit.

⁵⁰⁴ “The Supreme Court led by the great Chief Justice John Marshall took a broad view of Congress’s power to enact legislation and expressly rejected the interpretative principle of ‘strict constructionism’.” Huhn, op. cit., p. 308.

building of the transcontinental railroads, the funding of the land grant colleges, the creation and extension of the Freedmen's Bureau,⁵⁰⁵ and the adoption of the Homestead Act.⁵⁰⁶ This ushered in an era – the **Progressive Era** of the late 19th and 20th centuries –when Americans embraced a host of **social reforms**: women's suffrage; direct democracy; care for the poor, the mentally ill, and the mentally disabled; and the twin movements to promote universal education and abolish child labor.”⁵⁰⁷

If traditionally individual rights had been conceived “as ‘**negative liberties**’ that prohibit the government from interfering with private parties’ freedom of action [...] during the progressive era there arose the political concept of [...] ‘**positive liberty**’⁵⁰⁸ [...]: the belief that government can

⁵⁰⁵ “Freedmen's Bureau, (1865–72), during the Reconstruction period after the American Civil War, popular name for the U.S. Bureau of Refugees, Freedmen, and Abandoned Lands, established by Congress to provide practical aid to 4,000,000 newly freed black Americans in their transition from slavery to freedom. Headed by Major General Oliver O. Howard, the Freedmen's Bureau might be termed the first federal welfare agency. Despite handicaps of inadequate funds and poorly trained personnel, the bureau built hospitals for, and gave direct medical assistance to, more than 1,000,000 freedmen. More than 21,000,000 rations were distributed to impoverished blacks as well as whites.”

Britannica Encyclopaedia.

<http://global.britannica.com/EBchecked/topic/218498/Freedmens-Bureau>

Records of the Bureau of Refugees, Freedmen and Abandoned Lands.
<http://www.freedmensbureau.com/>

⁵⁰⁶ “Passed on May 20, 1862, the Homestead Act accelerated the settlement of the western territory by granting adult heads of families 160 acres of surveyed public land for a minimal filing fee and 5 years of continuous residence on that land.” *100 Milestone Documents.*

<http://www.ourdocuments.gov/doc.php?flash=true&doc=31>

⁵⁰⁷ Op. cit., p. 311.

improve people's lives by building infrastructure, funding education, and prohibiting abusive and exploitative conduct by powerful private entities."⁵⁰⁹

However, "with the rise of industrialization and greater federal regulation in the **late nineteenth century**, the Court began to show much less deference to Congress."⁵¹⁰

"It was a **time of retrenchment** when theories of States' rights and freedom of contract held sway over the authority of the central government; [...] it was marked by the stagnation in the interpretation of the Constitution; [...] the Supreme Court struck down nearly every piece of economic reform legislation that came before it, stalling the labour movement⁵¹¹ and other economic reform for nearly two generations."⁵¹²

It started with the 1905 Court's decision in ***Lochner v. New York***⁵¹³ which gave name to the period: **the Lochner Era**.⁵¹⁴ Among the justices

⁵⁰⁸ Positive liberty is a concept coined by historian James McPherson who draws the distinction between positive and negative liberty; "positive liberty" is "freedom to achieve a status of freedom previously denied by status of law."

James M. McPherson, *Abraham Lincoln and the Second American Revolution* 62-63, 1991, p. 137-138.

⁵⁰⁹ Huhn, op. cit., p. 311.

⁵¹⁰ Baker, op. cit., p. 269.

⁵¹¹ "Congress and the States enacted laws establishing minimum wages and maximum hours; prohibiting child labour; and protecting the rights of workers to organize and bargain collectively –the Supreme Court responded by striking down all of these laws under a variety of constitutional theories interpreting the Commerce Clause, the Spending Clause and the Due Process Clause." Huhn, op. cit., p. 312.

⁵¹² Ibid., p. 312.

there was a pervading belief “that the Constitution embodies a **particular economic theory** [which they mistook for a constitutional principle]”: the notion of *laissez faire*; and so they construed the Due Process Clause⁵¹⁵ to mean that “individuals’ and corporations’ property rights made it unconstitutional for the legislature to protect workers from abusive and exploitative terms of employment.”⁵¹⁶

According to those against the individual mandate, before 1937,⁵¹⁷ Congress ruled according to what the founding fathers had in mind: Congress had limited ability to act since it received the constraint from the States; government had “enumerated and limited powers.”⁵¹⁸

The **New Deal** changed this doctrine: these clauses were then used to introduce the host of progressive laws known as New Deal and to combat the grievous economic conditions of the Great Depression; and the result

⁵¹³ 198 U.S. 45 (1905).

⁵¹⁴ And continued with *Adair v. United States*, 208 U.S. 161 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Adkins v. Children’s Hospital*, 61 U.S. 525 (1923).

⁵¹⁵ The Fifth Amendment to the United States Constitution provides: [N]or shall any person . . . be deprived of life, liberty, or property, without due process of law.

⁵¹⁶ Huhn, op. cit., p. 312.

⁵¹⁷ It’s the date when *Helvering v. Davies* was passed.

⁵¹⁸ Valauri, op. cit., p. 590.

was that huge leaps were taken in progressive legislation⁵¹⁹ in a period of time that was “to last 60 years.”⁵²⁰

Despite the economic circumstances, Roosevelt had to wait for his second re-election to be able to put forward these all-embracing measures to handle the economy. During his first term of office (1933-1937), the Supreme Court struck down several important pieces of New Deal legislation.⁵²¹ Only during his second term (1937-1941) he was able to conform a more progressive Court which inaugurated “a revolution in the interpretation of the Constitution that affirmed the constitutionality of New Deal legislation and laid the groundwork for subsequent progressive legislation;⁵²² [...] the Supreme Court [began] recognizing a broad authority in Congress to enact laws setting economic policy.”⁵²³ The Supreme Court returned to the principle⁵²⁴ that “it is for Congress and not the Supreme Court to establish national economic policy.”⁵²⁵ The fact is that from 1937

⁵¹⁹ Examples of federal public health statutes supported by Congress’ expansive commerce powers and upheld by Courts include the following Acts: Food, Drug, and Cosmetic Act of 1938, Cigarette Labeling and Advertising Act of 1965, Clean Air Act of 1970, Occupational Safety and Health Act of 1970, Controlled Substances Act of 1970, Surface Mining Control and Reclamation Act of 1977 and Freedom of Access to Clinic Entrances Act of 1994. All these are detailed in Hodge, op. cit., p. 397.

⁵²⁰ Baker, op. cit., p. 270.

⁵²¹ This process is described by Schlesinger, Jr., *The Age of Roosevelt. Volume II. 1933 – 1935. The Coming of the New Deal*, Mariner, Boston, 2003; and Leichtenberg, *The Supreme Court Reborn: the Constitutional Revolution in the Age of Roosevelt*, Oxford University Press, Oxford, 1995, p. 26-51.

⁵²² “President Franklin Roosevelt proposed national health insurance in 1934, but dropped it in response to resistance by medical professionals.” Hoffman, *Oil and Water*, op. cit., p. 8.

⁵²³ Huhn, op. cit., p. 316.

⁵²⁴ It did so in *United States v. Carolene Products Co.* 304 U.S. 144 (1938).

onwards “the Supreme Court did not strike down a single piece of legislation as a violation of Congress’s powers under the Commerce Clause.”⁵²⁶

In his “**Four Freedoms**” speech,⁵²⁷ Roosevelt described what ordinary citizens had a right to expect from their government, i.e. “the basic things expected by our people of their political and economic systems”, among others “the enjoyment of the fruits of scientific progress in a wider and constantly rising standard of living”⁵²⁸ in direct reference to health care.

In 1995, the Court yet again “shifted views once again and somewhat **narrowed the scope** of Congressional power under the Commerce Clause;”⁵²⁹ it limited or did not expand this power any further since its enforcement had “effectually obliterated the distinction between what is national and what is local and created a completely centralized government.”⁵³⁰ The Supreme Court adopted “a limited government view of the constitutional framers: [...] the Constitution creates a Federal Government of enumerated powers.”⁵³¹ As a result, the Court’s constitutional role was reversed to pre-New Deal standards: it curtailed the powers of Congress should they cross the boundaries set by the

⁵²⁵ Huhn, op. cit., p. 316.

⁵²⁶ Again, this is described in detail by both Leichtenberg and Schlesinger.

⁵²⁷ Technically the 1941 State of the Union address.

⁵²⁸ *Franklin D. Roosevelt: The Four Freedoms*.
Retrieved from www.britannica.com/presidents/article-9116961.

⁵²⁹ Baker, op. cit., p. 270.

⁵³⁰ *United States v. Lopez*, 514 U.S. 549, 557 (1995) (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937).

⁵³¹ *Ibid.*, p. 596.

Constitution: “Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government [...] it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say, that such an act was not the law of the land.”⁵³² The five conservatives of the Rehnquist Court broke [the federalist] streak, “striking down the Gun-Free School Zones Act”⁵³³ of 1995.⁵³⁴

7.6.2.2 Does the Individual Mandate Confer Limitless Powers to Congress?

The current Court **-the Roberts Court-** was asked to decide, yet again, if and how the mandate affects the scope of Congress according to the Constitution: “In resolving the challenges to the PPACA, the central question for the Court will be whether it decisively returns Commerce Clause jurisprudence to an earlier, pre-New Deal era in which the Court significantly limited Congress’s regulatory powers, or whether it affirms the leading role of Congress in determining the scope of the Commerce Clause.”⁵³⁵

⁵³² Marshall in *Valauri*, op. cit., p. 598. Opinion of Chief Justice Marshall, in the case of *McCulloch vs. the State of Maryland*, 1819.

⁵³³ Hoffmann, op. cit., p. 829.

⁵³⁴ “This statute makes it a federal crime to possess a gun within 1000 feet of any school—public, private, or parochial. Punishment for violations of this criminal law may be up to five years imprisonment and up to \$5000 fine. (18 U.S.C. Sec. 924 (a)(4))”

North Dakota Department of Public Instruction.
<http://www.dpi.state.nd.us/speced1/laws/policy/guns.pdf>

⁵³⁵ Baker, op. cit., p. 268.

In the same sense: “The central constitutional issue has to do with the Commerce Clause, a provision in Article 1 [of the Constitution] that has been interpreted in a way that has allowed for the considerable expansion of federal power since the New Deal.”⁵³⁶

Naturally, scholars take positions.

Hall argues that: “if the individual mandate were allowed, there would be no stopping Congress from mandating the purchase of anything it pleases. **Mandatory purchases** have substantial economic impact almost by definition; since most goods and services are part of a national market, a mandate to purchase just about any product might be constitutionally justified as an aspect of regulating that market or a related market. [...] Whichever way one reads these two clauses [the Commerce clause and the Necessary and Proper clause] and their precedents, **the Constitution cannot allow such a result.**”⁵³⁷

Scholars for the individual mandate are equally blatant in defending the opposite: “Congress has nearly **unbridled authority** to regulate products sold in or affecting interstate commerce, and health insurance is clearly one such product;”⁵³⁸ and “the compulsory insurance is a ‘necessary and proper’ component of PPACA’s broader regulation of the insurance market, which is firmly grounded in the core of the conventional commerce power.”⁵³⁹

⁵³⁶ Troy, op. cit, p. 21.

⁵³⁷ Hall, op. cit., p. 1864.

⁵³⁸ Ibid., p. 1826.

⁵³⁹ Ibid., p. 1828.

The Florida court argued that upholding the individual mandate would allow Congress to mandate the **purchase of broccoli**: “It would seem only logical under the defendants’ rationale that Congress may also regulate the ‘economic decisions’ not to go to the doctor for regular check-ups and screenings, or that Congress could require that people buy and consume broccoli at regular intervals.”⁵⁴⁰

Hall disagrees with the Court’s assumption: “even if compulsory health insurance is upheld as necessary and proper, Congress still could not mandate the purchase of broccoli unless doing so is, without piling ‘inference upon inference,’ truly an important part of a larger regulatory scheme that the Commerce Clause independently permits. Moreover, “upholding this one mandate does not permit *all* others.”⁵⁴¹

7.6.2.3 Is the Decision not to Buy Insurance “Activity” or “Inactivity”?

Another matter of dissention is whether the commerce clause can be enforced on commercial inactivity as well since not purchasing health insurance can be considered commercial inactivity.

The individual mandate imposes a duty to do something, i.e. to buy insurance; but the situation at hand is different because citizens may decide not to do something (precisely not to buy insurance) which in legal terms is an **inactivity**. If it is not an activity that falls within the scope of the

⁵⁴⁰ *Florida ex rel. Bondi v. U.S. Department of Health & Human Services*, No. 10-0091, 2011 WL 285683

⁵⁴¹ Hall, op. cit., p. 1866.

commerce clause, then it follows that the individual mandate cannot be imposed on those that decide not to purchase insurance.⁵⁴²

Scholars against the individual mandate consider that “Congress’ interstate commerce powers do not authorize federal imposition of the individual mandate because **Congress lacks the power to regulate commercial ‘inactivity.’** [...] Congress cannot regulate the situation of individuals who choose not to obtain health insurance because they are not engaged in a commercial venture.”⁵⁴³ The individual mandate represents a “potentially unbounded assertion of Congressional authority: the ability to compel Americans to purchase an expensive health insurance product they have elected not to buy, and to make them repurchase that insurance product every month for their entire lives.”⁵⁴⁴

Barnett stretches out the argument: “the statute [i.e. the PPACA] speciously tries to convert inactivity into the ‘activity’ of making a ‘decision’.”⁵⁴⁵ So, at the end of the day, “a ‘decision’ not to take a job or not to sell your house or not to buy a Chevrolet is an ‘activity’ that is commercial and economic in nature’ [and] that can be mandated by Congress.”⁵⁴⁶

Previous to the Supreme Court judgment, the District court in Florida ruled that “**Congress lacks the constitutional authority** to require

⁵⁴² This phenomenon, not having health insurance, is not rare in the United States as we will see in the ensuing chapters.

⁵⁴³ Hall, op. cit., p.1830.

In fact, PPACA compels the purchase of insurance based simply on “the condition of being a lawful U.S. resident, without regard to any commercial activity.” Hodge, *Upholding*, op. cit., p. 394.

⁵⁴⁴ *Cuccinelli*, loc. cit.

⁵⁴⁵ Barnett, *Commandeering*, op. cit., p. 596.

⁵⁴⁶ *Ibid.*, p. 605.

legal residents to obtain health insurance⁵⁴⁷ and so established that being uninsured (i.e. such inactivity) “falls entirely outside of the commerce power.”⁵⁴⁸

“The mere status of being without health insurance, in and of itself, has absolutely no impact whatsoever on interstate commerce (not “slight,” “trivial,” or “indirect,” but no impact whatsoever). If impact on interstate commerce were to be expressed and calculated mathematically, the status of being uninsured would necessarily be represented by zero. Of course, any other figure multiplied by zero is also zero. Consequently, the impact must be zero, and of no effect on interstate commerce.”⁵⁴⁹

This startling assertion is taken with a pinch of salt even by those who agree with the Court’s overall opinion: the assertion is true only in a “highly constrained [...] sense” since “not spending money is a major driver of economic forces and is as much a matter of market dynamics as is spending money.”⁵⁵⁰

Other scholars argue that regardless of whether economic inactivity entails economic transaction, i.e. how active or passive the enterprise in question is, **“even the choice not to purchase health care is economic**

⁵⁴⁷ Ibid., p. 1827.

⁵⁴⁸ Ibid., p. 1835.

⁵⁴⁹ *Florida ex rel. Bondi v. U.S. Department of Health and Human Services*, No. 10-0091, 2011 WL 285683, at *26 (N.D. Fla. Jan. 31, 2011).

⁵⁵⁰ Hall, op. cit., p. 1935.

activity because if a person makes a choice not to purchase health care, the person is making the economic decision to purchase something else or save the money” i.e. it is still economic activity. So it follows that the individual mandate falls under the frame established by the Constitution. Hence, “all the tests that the Supreme Court has developed for the regulation of commerce speak in terms of activity.”⁵⁵¹ The word ‘activity’ appears in various permissive or limiting phrases only because activity was what Congress actually regulated in these cases.⁵⁵² “There is not a breath of suggestion in these decisions that Congress may not reach economic inactivity. The Court simply has never been called upon to decide this issue.”⁵⁵³

On the opposite extreme pundits are hesitant to consider that the decision not to purchase something is in fact, an activity: “conceptually **it is contestable that being uninsured is an activity**. In theory, failure to purchase many goods or services could be characterized as decisions to do something else instead. Not purchasing a car could be framed as a decision to walk, bike, or take public transport. Thus, opponents ask why the commerce power could not be used to mandate the purchase of automobiles, or almost any other consumer good, in order to stimulate the relevant economic sector.”⁵⁵⁴

⁵⁵¹ Valauri, op. cit., p. 601.

⁵⁵² Cases which involved a ban on medicinal use of home-grown marijuana. This particular case was decided in *Gonzales v. Raich* 545 U.S. 1, 22, 2005.

⁵⁵³ Hall, op. cit., p. 1831.

⁵⁵⁴ Ibid., p. 1832.

Moreover, the existence of reversed selection⁵⁵⁵ is used to claim that not to buy can be categorized as commercial activity: “Though the decision not to buy insurance⁵⁵⁶ could be considered an inactivity⁵⁵⁷ and thus not fall within the boundaries of the commerce clause, the ensuing consequence that those without insurance will pay for care out of pocket or receive care that others pay for is without question, an action.”⁵⁵⁸

Other experts treat inaction as **affirmative activity** and argue that the mandate actually “taxes the **activity of ‘self-insurance’**.” But are extracautious in endorsing the mandate for fear of hypothetical negative consequences: “it could open a Pandora’s box of government intrusion (e.g. taxing failure to floss as ‘flossing self-insurance’). Extending excise taxes to inactivity would arguably take sin taxes to an unprecedented new level of ridiculousness.”⁵⁵⁹

Congress uses the **Necessary and Proper Clause**⁵⁶⁰ as legal basis to assert that “Congress may reach intrastate economic activity that substantially affects interstate commerce;” i.e. “quite broadly, as meaning

⁵⁵⁵ The next chapter dwells on this issue.

⁵⁵⁶ Decision typically taken by free riders – see chapter 8.

⁵⁵⁷ In *Mead v. Holder*, 766 F. Supp. 2d 16 - 2011, the court established that “it is pure semantics to argue that an individual who makes a choice to forgo health insurance is not ‘acting’ [...] Making a choice is an affirmative action, whether one decides to do something or not do something. They are two sides of the same coin. To pretend otherwise is to ignore reality.” Hall, op. cit., p. 1831.

⁵⁵⁸ Hall, op. cit., p. 1832.

⁵⁵⁹ Held, op. cit., p. 731.

The following from the Brief of the Petitioner-Appellee at 19, Florida ex rel. *Bondi v. U.S. Dep’t of Health & Human Services*, No. 3:10-CV-91-RV/EMT (11th Cir. May 44, 2011) is self-explanatory: “Simply for being alive, an individual, by federal directive, must purchase qualifying health insurance...”

⁵⁶⁰ See Section 7.6.2 for the exact wording of the Clause.

merely ‘convenient, or useful’ or ‘conducive’ to the authority’s ‘beneficial exercise’⁵⁶¹ of a constitutionally recognized power.”⁵⁶² When applied this interpretation to health: “this looser construction is much like the meaning of necessary in the familiar insurance construct ‘medically necessary,’ which generally means medically appropriate rather than absolutely essential to life or limb.”⁵⁶³

The Court⁵⁶⁴ has repeatedly said that “where Congress has the authority to enact a regulation of interstate commerce, ‘it possesses every power needed to make that regulation effective’.”⁵⁶⁵ So it follows that from the point of view of the necessary and proper clause, it is utterly implausible to argue “or even suspect that regulation of inactivity is somehow categorically improper across the full range of federal powers.”⁵⁶⁶ Hall quotes a long list of examples⁵⁶⁷ to preclude any attempt to restrict the Necessary and Proper Clause “to a narrow and strict implementation of express powers.”⁵⁶⁸ “the Court has repeatedly emphasized Congress’s latitude to determine when legislative measures are a necessary means to

⁵⁶¹ *United States v. Comstock*, 130 S. Ct. 1949, 1956 (2010) (quoting *McCulloch*, 17 U.S. (Wheat.) at 413, 418).

⁵⁶² Hall, op. cit., p. 1843.

⁵⁶³ Ibid.

⁵⁶⁴ *Gonzales v. Raich*, 545 U.S. 1, 36.

⁵⁶⁵ Hall, op. cit., p. 1858.

⁵⁶⁶ Ibid., p. 1854.

⁵⁶⁷ *McCulloch*, 17 U.S. (4 Wheat.); *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603, 625 (1869); *Legal Tender Cases*, 79 U.S. (12 Wall.) 457 (1870); *United States v. Comstock*, 130 S. Ct. 1949, 1972 (2010).

⁵⁶⁸ Ibid.

an end that is clearly constitutional.”⁵⁶⁹ Then he analyses **how “proper” the individual mandate is**; and concludes that challenges that claim that the individual mandate is not a ‘proper’ measure⁵⁷⁰ solely based on generic concerns about “expansive federal authority”⁵⁷¹ do not suffice to declare necessary measures ‘improper’⁵⁷² including the measure known as individual mandate.

Those against the individual mandate argue that the PPACA has at least **two separate goals**: making everyone eligible for full coverage and covering as many people as possible. “Insurance regulation accomplishes the first goal, while the individual mandate pursues the second. The two may be related, but challengers insist that the mandate is not subsidiary to insurance regulation and that “it does more than merely execute or implement insurance regulation. The mandate does not ‘carry [...] into execution’⁵⁷³ Congress’s power to regulate insurers but attempts to exercise “an independent power to regulate individuals”⁵⁷⁴ when the Necessary and Proper Clause authorizes only “the implementation of express powers, and

⁵⁶⁹ Hall, op. cit., p. 1850.

⁵⁷⁰ The Florida court used “proper” in this sense: “The defendants have asserted again and again that the individual mandate is absolutely ‘necessary’ and ‘essential’ for the Act to operate as it was intended by Congress. [...] Nevertheless, the individual mandate falls outside the boundary of Congress’ Commerce Clause authority and cannot be reconciled with a limited government of enumerated powers. By definition, it cannot be ‘proper’” (2011 WL 285683, at *33).

⁵⁷¹ “Buying land to build post offices or postal roads was once argued to be an improper invasion of state jurisdiction, but this has long since been regarded as one of the best illustrations that we have of the nonsense of which the states-rights metaphysic was capable.” Hall, op. cit., p. 1855.

⁵⁷² Ibid., p. 1854.

⁵⁷³ U.S. Constitution, article I, 8, clause 18.

⁵⁷⁴ Hall, op. cit., p. 1847.

so the argument goes, the clause does not support new powers that pursue separate goals.”⁵⁷⁵

Barnett argues that **insurance contracts cannot be included under the heading ‘commerce’**:

“since such contracts are mere promises to pay money upon the occurrence of specified conditions, and do not involve the conveyance of goods or other items from one state to another. [...] Thus, under the original meaning of the Commerce Clause, as affirmed by the Court⁵⁷⁶ [before the *Lochner* Era],⁵⁷⁷ Congress lacks any power over the health insurance business. The insurance business, like the businesses of manufacturing or agriculture, is to be regulated exclusively by the states.”

Halls argues the opposite by deepening into the economic nature of commerce:

“Because a mandate to purchase applies to someone who has not entered into commerce, one might argue that such a mandate cannot constitute the regulation of commerce. [...] There is

⁵⁷⁵ Brief of the House of Republican Leader John Boehner as Amicus Curiae in Support of Plaintiff’s Motion for Summary Judgment at 8-13, *Florida ex rel. McCollum v. U.S. Department of Health and Human Services*, No. 100091 (N.D. Fla. Jan. 31, 2011), ECF No. 119.

⁵⁷⁶ In *Paul v. Virginia*, 75 U.S. 1868.

⁵⁷⁷ “Following the Court’s repudiation of *Lochner* jurisprudence, there is no conceivable basis to argue that the Constitution specially protects an individual’s freedom to be uninsured.” Hall, op. cit., p. 1929.

discernible logic to this reasoning, but it is not compelling logic. [...]

Insurance is commerce. **To mandate the purchase of insurance is, grammatically, just as much the regulation of insurance is a mandate to sell insurance, or a prohibition on buying insurance.** Commerce clearly includes both the purchase of products and their manufacture and sale. Because regulation includes mandating as well as prohibiting behaviour related to products, it follows logically that ‘regulating commerce’ can include mandating a purchase;”⁵⁷⁸ and “the passivity of decisions not to purchase does not rob them of their **inherently economic nature**, especially when considering **the nonpurchase of insurance, which is a quintessentially economic product.**”⁵⁷⁹

Moreover, Hall warns of the **danger of foreclosing the use of the individual mandate** or other type of regulations of “pure inactivity”: “a bar on any regulation of inactivity would preclude federal measures that might, someday soon, be desperately needed. For instance, authority under the commerce power to compel purchases or other actions⁵⁸⁰ could well be essential to combat a horrifically lethal pandemic such as an outbreak of the avian flu that realistically might threaten tens of millions of lives;”⁵⁸¹ in the same sense: “categorically barring the regulation of inactivity in order to avoid hypothetical concerns at all costs would foolishly hamstring the

⁵⁷⁸ Ibid., p. 1834.

⁵⁷⁹ Ibid., p. 1838.

⁵⁸⁰ “Like mandating vaccinations or other preventive measures.” Ibid., p. 1862.

⁵⁸¹ Ibid., p. 1863.

federal government's ability to counter truly frightening threats to public health."⁵⁸²

7.6.3 SCOTUS' Ruling Based on Congress's Taxing Power

The Supreme Court ruled on the PPACA's constitutionality and Congress's taxing power⁵⁸³ claiming that the individual mandate is a tax and a valid one under **Congress's taxing power** and for the benefit of the **general welfare**.⁵⁸⁴ The taxing power "is a broad power, which gives Congress the authority to act in situations where it might otherwise lack authority under the Commerce Clause."⁵⁸⁵ **The individual mandate's "shared responsibility payment" (section 5000A)⁵⁸⁶ is a tax** "enforced by the Internal Revenue Service (IRS)"⁵⁸⁷ (though it is labelled a penalty)⁵⁸⁸ for the purposes of determining its constitutionality.

The Court, however, on the choice to forgo buying insurance, establishes that the individual mandate **does not impose purchasing**

⁵⁸² Ibid., p. 1871.

⁵⁸³ In *National Federation of Independent Business v. Sebelius*, Sup. Ct. Dkt. No. 11-393 (U.S. 6/28/12).

⁵⁸⁴ U.S. Constitution, Art I. Section 8, Clause 1: "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provided for the [...] general Welfare."

⁵⁸⁵ Barnett, *Commandeering*, loc. cit.

⁵⁸⁶ See Section 7.3 of this Thesis.

⁵⁸⁷ Barnett, loc. cit.

⁵⁸⁸ "One argument against upholding the mandate as a tax is that the statutory provisions creating the individual mandate explicitly use the term 'penalty' rather than 'tax'." Baker, op. cit., p. 274.

insurance: “it is not a legal command to buy insurance;”⁵⁸⁹ the non-compliance with the mandate established by the PPACA results in a tax imposed on the citizen.

This convenient construction by the Supreme Court has naturally been criticized: “They did a pirouette, then they pivoted in another direction, and then they cartwheeled around the other way in the decision.”⁵⁹⁰ And it has also been praised: this decision has avoided a “sharp confrontation with the political branches over the Commerce Clause.”⁵⁹¹

Barnett claims that the individual insurance mandate was designed **“to obviate political accountability.”**⁵⁹² the President “needed to avoid accountability for breaking his repeated pledge not to raise taxes on persons making below a certain amount of money, so **he vehemently denied that the mandate imposed a tax.**”⁵⁹³ And he did indeed: “to say that you’ve got to take a responsibility to get health insurance is absolutely not a tax increase.”⁵⁹⁴

⁵⁸⁹ Sally P. Schreiber and Alistair M. Nevius, “Supreme Court upholds health care law”, *Journal of Accountancy*, June 28, 2012.

⁵⁹⁰ Thomas Considine, “Breaking down the Affordable Care Act Decision,” *NJBIZ*, July 2, 2012. www.njbiz.com.
<http://www.eanj.org/files/Breaking%20down%20ACA%20Decision%20July%202%202012%20NJBIZ.pdf>

⁵⁹¹ Baker, op. cit., p. 274.

⁵⁹² Barnett, *Commandeering*, loc. cit.

⁵⁹³ Ibid.

⁵⁹⁴ Interview by George Stephanopoulos with Barack Obama, U.S. President, 9 Sept 2009, available at <http://abcnews.go.com/blogs/politics/2009/09/obama-mandate-is-not-a-tax/>

The lower courts⁵⁹⁵ in the successful challenges to the individual mandate's constitutionality did not believe that the taxation power had been exercised. The historically unprecedented nature of "a provision that taxes failure to engage in commercial activity"⁵⁹⁶ was first made reference to in *Cuccinelli*, a decision by the U.S. Court of Appeals for the Eleventh Circuit.⁵⁹⁷ "If allowed to stand as a tax, the Minimum Essential Coverage Provision would be the only tax in U.S. history to be levied directly on individuals for their failure to affirmatively engage in activity mandated by the government not specifically delineated in the Constitution." Hall counters this argument when he says that Congress does however regulate inaction by agents dealing in commercial activity such as "requiring businesses to serve patrons without discrimination."⁵⁹⁸ The inaction being not to discriminate.

According to the Eleventh Circuit Court of Appeals, it also exceeds the scope of the Congress' constitutional authority to tax since the mandate is not called a tax by the PPACA but a penalty which aims at regulating behaviour rather than at raising revenue: "The Act's most contentious tax provisions share a common theme: they involve the imposition of taxes as a means of discouraging certain behaviour."⁵⁹⁹

⁵⁹⁵ The courts in the following cases: *Goudy-Bachman v. U.S. Dep't of Health & Human Services*, *Virginia ex rel. Cuccinelli v. Sebelius*, *Liberty Univ., Inc. v. Geithner*, *U.S. Citizens Association v. Sebelius*, *Thomas More Law Centre v. Obama*.

⁵⁹⁶ Held, op. cit., p. 730.

⁵⁹⁷ After Attorney General Ken Cuccinelli. *Cuccinelli*, 728 F. Supp. 2d at 788 n. 13

⁵⁹⁸ Hall, op. cit., p. 1830.

Held describes the effects of a **constitutionally “unlimited” taxation power as “deleterious”**: “If left unchecked, the tax power can be used [...] to affirmatively require Americans to engage in certain economic activity (e.g. the purchase of health insurance). Given that an unlimited power to tax involves, necessarily, a power to destroy, an unfettered tax power could effectively give Congress license to regulate far beyond its enumerated constitutional boundaries through cunningly – drafted Tax Code enactments that have little, if any, effect on raising revenue.”⁶⁰⁰

Thorup is even more blatant: “The individual mandate is structured to hide money and avoid unpopular criticism of Congress’ actions. The individual mandate is **a backdoor tax**, wherein Congress is able to cloak money by diverting taxpayer dollars directly to the purchase of health insurance without first being collected by the government. Citizens do not see their tax rates rise, nevertheless they end up with less money. [...] The day may soon come when we realize that Uncle Sam may be able to compel us to do anything. For the people of the United States, that day may arrive on January 1, 2014.”⁶⁰¹

Day is against individual mandates in general: “What is unique about individual mandates is that they are essentially **a poll tax** [...] which charges the same dollar amount for each person, and so it’s incredibly regressive. [...] Poll taxes capture a high percentage of lower incomes and

⁵⁹⁹ Maximilian Held, “Go Forth and Sin [Tax] No More: Important Tax Provisions, and their Hazards, in the Patient Protection and Affordable Care Act” 46 *Gonz. L. Rev.* 717, 2011, p. 721.

⁶⁰⁰ Held, *op. cit.*, p. 738-9.

⁶⁰¹ Thorup, *op. cit.*, p. 977.

January 1, 2014 is the date when the individual mandate takes effect.

are basically incapable of taxing any meaningful portion of higher incomes.”⁶⁰² He distinguishes between poll taxes, progressive taxes and flat taxes and considers the first ones the most unfair since “by requiring a range of people to purchase a commodity instead of forcing them to pay a portion of their income into a health care system, we are financing health care for that range of people in the most regressive possible way.”⁶⁰³

7.6.3.1 Importance of SCOTUS’ decision

The constitutionality of the individual mandate is the most important issue the Supreme Court has had to rule upon i.e. whether the government can enforce a citizen to get insurance “either through their employer, private market, or Medicaid.”⁶⁰⁴

The great divide among the media, academia and the people on this matter materialized in the **numerous challenges** against the law and ended up with a decision by the Supreme Court.

Right from the very beginning, **scholars tried to predict the possible outcome⁶⁰⁵ of the judgment⁶⁰⁶ based on previous case law.**⁶⁰⁷

⁶⁰² Day, op. cit., p. 240.

⁶⁰³ Ibid, p. 241.

⁶⁰⁴ Sheen, op. cit., p. 1736.

⁶⁰⁵ Troy came up with four different scenarios: “1. Uphold the entire law. 2. Invalidate the individual mandate and/or the Medicaid expansion, but keep the rest of the law intact. 3. Strike down the entire law. 4. Refuse to rule until 2015 when the mandate penalty is first applied.” Troy, op. cit., p. 22.

⁶⁰⁶ *National Federation of Independent Business v. Sebelius*, June 28, 2012.

⁶⁰⁷ Troy even quoted *Marbury v Madison* to criticize Obama.

As it happens with every legal matter, scholars used case law *à la carte*, i.e. whichever cases suited their interests would fit this particular case to make their point; some would argue against the law and others for the law, and used the most appropriate jurisprudence to argue their case. The most contentious aspect of the PPACA was the individual mandate and so they focused on the consequences of the Court's decision in terms of enforcing it; if held unconstitutional they pondered how it would affect the rest of the law.

One thing all parties agreed on was on the importance of both the legislation and the judgment.⁶⁰⁸ In fact, the reason why the individual mandate gained so much importance is not only because of the costs it would purportedly entail but also because the individual mandate and several aspects of the PPACA aimed at the core of **deeply-ingrained values typical of American exceptionalism**: "The promise of American exceptionalism is that it provides a class-free society in which all have the **equal opportunity to succeed**. National health care promotes this vision. It not only comports with, but also furthers, the best aspects of American exceptionalism and the ideals that we share as a nation."⁶⁰⁹ Those opposing PPACA do not focus on equality but on **individualism** and the threat to individualism that a government-enforced mandate entails or is apt to entail. Equality and individualism are concepts belonging to the arena of American exceptionalism (later discussed)⁶¹⁰. Either side delve on how the

⁶⁰⁸ It is a landmark 5-4 decision "that will fundamentally shape health care in the US for decades to come." Sheen, op. cit., p. 1741.

⁶⁰⁹ Marshall, op. cit., p. 152.

law affects (was already affecting in some cases) every kind of stakeholder, from patients to insurers.

For American conservatives the fact that America does not count with a legal enforcement of the individual mandate, not even a legal establishment or entitlement of the right to health care⁶¹¹ is a purely American feature despite the fact that “the idea for an individual mandate originated with Republican lawmakers, who never questioned its constitutionality until now.”⁶¹²

Hall uses a common sense argument in reference to the uninsured to conclude his very thorough paper: “Even if the mandate is not squarely within Congress’s commerce power, it meets a high threshold of necessity to accomplish the overall reform scheme, which is clearly within congressional power, to create a market structure in which **no one is ever again medically uninsurable.**”⁶¹³

In this sense, Obama’s concluding remark on his speech the day the Supreme Court released its decision reviews it from the point of view of American exceptionalism: “I know there will be a lot of discussion today about the politics of all this, about who won and who lost. That’s how these things tend to be viewed here in Washington. But that discussion completely misses the point. Whatever the politics, today’s decision was a

⁶¹⁰ Chapter 9

⁶¹² Hall, op. cit., p. 1826.

⁶¹³ Ibid., p. 1872.

victory for people all over this country whose lives will be more secure because of this Law and the Supreme Court's decision to uphold it.”⁶¹⁴

7.7 Conclusion

A thorough analysis of the constitutionality of the individual mandate entails having to the legal basis to enforce it. Attorneys in each side focused on the power of Congress to regulate an activity; on whether if not purchasing insurance is or not an activity; on whether the amount the citizen has to pay in case s/he decides to remain uninsured is a tax or a penalty. The President does not use the terms “individual mandate” in the speeches and uses the terms “personal responsibility” instead. Having to avoid the terms indicates how controversial the issue is and the magnificent speech expert he is.

At the heart of the controversy are economic considerations closely related which are closely related to values belonging to American exceptionalism: should coverage be made universal and be provided in the most grievous cases by the State, or is it every man for himself i.e following a tradition of individualism every man should provide for his own health insurance? This is further discussed in the ensuing chapters.

⁶¹⁴ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room. June 28th, 2012. 12:15 P.M. EDT

8 The PPACA and Access to Health Insurance

On July 1st, uninsured Americans who've been locked out of the insurance market because of a preexisting condition will now be able to enroll in a new national insurance pool where they'll finally be able to purchase quality, affordable health care -- some for the very first time in their lives.

*Obama remarks on the Affordable Care Act.
Washington, D.C. June 22, 2010.*

For the first time, uninsured individuals and small businesses will have the same kind of choice of private health insurance that Members of Congress get for themselves. If this reform becomes law, Members of Congress will be getting their insurance from the same place the uninsured get theirs. Because if it's good enough for the American people, it ought to be good enough for the people you send to Washington.

*Obama speaks on health care reform in Strongsville, Ohio,
March 15, 2010.*

After nearly a century of trying, we are closer than ever to bringing more security to the lives of so many Americans. The approach we've taken would protect every American from the worst practices of the insurance industry. It would give small businesses and uninsured Americans a chance to choose an affordable health care plan in a competitive market.

State of the Union Address. Washington, D. C. January 27, 2010.

8.1 Introduction

This chapter examines the public choice envisaged in the PPACA in the form of exchanges, available to those who cannot afford insurance. It explores the situation of the uninsured and free riders as made reference in the speeches. The PPACA gives priority to them since their situation has a grievous effect on those that do count on insurance and on the market in general. The description of the former is paramount in order to understand the use of individualism and collective action as arguments against and for, respectively, the PPACA. These will be examined in greater detail in the ensuing chapters.

8.2 The Exchanges

The Supreme Court's decision declaring the constitutionality of the individual mandate entails that every citizen in America is entitled to benefitting from the health care system. In order to ensure that this actually happens, the PPACA establishes a system of **exchanges**⁶¹⁵ which affect the whole Law. Some scholars, like Hodge, take a global perspective: the PPACA is not "merely a health insurance reform initiative; it does not address the health care consumed by individuals solely to regulate the

⁶¹⁵ Insurance Exchange, Health Insurance Exchange. An organized marketplace for the purchase of health insurance set up as a governmental or quasi-governmental entity to help insurers comply with consumer protections, compete in cost-efficient ways, and to facilitate the expansion of insurance coverage to more people. *The Urban Institute*. urban.org/toolkit/PolicyDecoderI.cfm#exchange

health insurance market”⁶¹⁶ but rather it’s a wholly new “**public health act**” which seeks to advance “a core public health objective of improving access to health care services;” thus, “the individual mandate provision is designed not so much to regulate consumers’ health care purchasing choices as it is to remedy the **lack of universal access** to basic health services,⁶¹⁷ one of the leading causes of morbidity and mortality in the United States.”⁶¹⁸ In this sense, Section 399V of the PPACA states that a key goal of the Law is “to increase access to quality health care.”

8.3 Financing the Public Option

Obama examines this issue in the speeches. He establishes the source of finance for the public option and explains how it will affect current insurers and customers:

“In fact, based on Congressional Budget Office estimates, we believe that less than 5 percent of Americans would sign up. Despite all this, the insurance companies and their allies don't like this idea. They argue that these private companies can't fairly compete with the government, and they'd be right if taxpayers were subsidizing this public insurance option, but they won't be. I've insisted that, like any private insurance company, **the public insurance option**

⁶¹⁶ Hodge, op. cit., p. 395.

⁶¹⁷ The individual mandate requirement is “pivotal to achieving this public health goal.” Ibid., p. 396.

⁶¹⁸ Ibid., p. 396.

would have to be self-sufficient and rely on the premiums it collects. But by avoiding some of the overhead that gets eaten up at private companies by profits and excessive administrative costs and executive salaries, it could provide a good deal for consumers and would also **keep pressure on private insurers to keep their policies affordable** and treat their customers better, the same way public colleges and universities provide additional choice and competition to students without in any way inhibiting a vibrant system of private colleges and universities.

In this section he insists that this system is optional:

“An additional step we can take to keep insurance companies honest is by making a **not-for-profit public option** available in the **insurance exchange**. Now, let me -- let me be clear. [...] Let me be clear, it would only be **an option for those who don't have insurance**. No one would be forced to choose it and it would not impact those of you who already have insurance.”

He continues by assuring that the public option will not be financed by those benefiting already from public programmes (i.e. Medicare and Medicaid):

“Now, I know there's some concern about a public option. In particular, I understand that you are concerned that today's

Medicare rates will be applied broadly in a way that means our cost savings are coming off your backs. These are legitimate concerns, but ones, I believe, that can be overcome. As I stated earlier, the reforms we propose are to reward best practices, focus on patient care, not the current piece-work reimbursement. What we seek is more stability and a health care system on a **sound financial footing**. And these reforms need to take place regardless of what happens with a public option. With reform, we will ensure that you are being reimbursed in a thoughtful way tied to patient outcomes instead of relying on yearly negotiations about the Sustainable Growth Rate formula⁶¹⁹ that's based on politics and the state of the federal budget in any given year. The alternative is a world where health care costs grow at an unsustainable rate, threatening your reimbursements and the stability of our health care system.”⁶²⁰

⁶¹⁹ “Section 1848 of the Social Security Act requires the Secretary to make available to the Medicare Payment Advisory Commission (MedPAC) and the public by March 1 of each year, an estimated Sustainable Growth Rate (SGR) and estimated conversion factor applicable to Medicare payments for physicians' services for the following year and the data underlying these estimates.” CMS. gov. Centers for Medicare and Medicaid Services. <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SustainableGRatesConFact/index.html>

⁶²⁰ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

8.4 The Public Option and American Exceptionalism

Obama uses American exceptionalism to put an end to the following criticisms. The public option did not come out of the blue – it follows tradition; and its ultimate goal will benefit all Americans:

“What are not legitimate concerns are those being put forward claiming a public option is somehow a **Trojan horse for a single-payer system**.⁶²¹ I'll be honest. There are countries where a single-payer system may be working.⁶²² But I believe [...] that **it is important for us to build on our traditions here in the United States**. So, when you hear the naysayers claim that I'm trying to bring about **government-run health care**, know this – they are not telling the truth. What I am trying to do – and **what a public option will help do – is put affordable health care within reach for millions of Americans**. And to help ensure that everyone can afford the cost of a health care option in our Exchange, we need to provide assistance to families who need it. That way, there will be no reason at all for anyone to remain uninsured.”⁶²³

⁶²¹ “In order to provide universal health coverage, single payer systems use a unified public payer [...] to pay the bills for people's health costs, rather than processing payments through a patchwork of private insurers. Lawrence and Skocpol, op. cit., 189.

⁶²² Canada, for instance.

For a list of countries visit: <http://www.democraticunderground.com/10021884064>
A list by Country – Start Date of Universal Health Care – System Type, November 26th, 2012.

He foresees the reaction from either political tendency and provides different reasons to justify his choice:

“Now, it is... It's -- it's worth noting that a strong majority of Americans still favor a public insurance option of the sort I've proposed tonight. But **its impact shouldn't be exaggerated by the left or the right or the media**. It is only one part of my plan, and shouldn't be used as a handy excuse for **the usual Washington ideological battles**.

To my progressive friends, I would remind you that for decades, the driving idea behind reform has been **to end insurance company abuses and make coverage available for those without it**. The public option -- the public option is **only a means to that end, and we should remain open to other ideas that accomplish our ultimate goal**. [...]

And **to my Republican friends**, I say that rather than making wild claims about a **government takeover of health care**, we should work together to address any legitimate concerns you may have. For example -- for example, some have suggested that the public option go into effect only in those markets where insurance companies are not providing affordable policies.

⁶²³ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

Others have proposed a co-op⁶²⁴ or another non-profit entity to administer the plan. These are all constructive ideas worth exploring. But I will not back down on the basic principle that, **if Americans can't find affordable coverage, we will provide you with a choice.** And -- and I will make sure that no government bureaucrat or insurance company bureaucrat gets between you and the care that you need.”⁶²⁵

So the rationale behind the public reform is to improve access to health care for all Americans. He makes frequent reference to the uninsured, not just to explain what the public option is about but also to justify the need to reform, the need to increase access to health insurance against the backdrop of a grave economic crisis.

There is, indeed, an **ethical/ humanitarian concern** brought on by the economic circumstances which in turn highlight their unequal effects on the people:

“So the **amount of vulnerability that was out there was horrendous.** And what I said to myself and what I said to my team was even as we were dealing with this big crisis -- immediate crisis

⁶²⁴ “The Affordable Care Act calls for the establishment of the Consumer Operated and Oriented Plan (CO-OP) Program, which will foster the creation of qualified nonprofit health insurance issuers to offer competitive health plans in the individual and small group markets.”

<http://www.cms.gov/CCIIO/Programs-and-Initiatives/Insurance-Programs/Consumer-Operated-and-Oriented-Plan-Program.html>

CMS.gov – Centers for Medicare & Medicaid Services. A federal government website managed by the Centers for Medicare & Medicaid Services Baltimore, MD.

⁶²⁵ Obama’s Health Care Speech to Congress. September 9th, 2009.

with respect to the economy, we've got to start doing something to make sure that ordinary folks who are feeling insecure because of health care costs, **that they get some relief.**"⁶²⁶

It is not acceptable to have first-world citizens pay for the consequences of not being able to pay for insurance,⁶²⁷ especially when these companies are free to carry out grievous⁶²⁸ practices on patients⁶²⁹ (e.g. increasing premiums to the regular payer when s/he falls ill).⁶³⁰ It is not

⁶²⁶ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

⁶²⁷ "Despite the medical miracles we have developed, the United States has done a poor job of making even routinely medical care available to its population. Millions of Americans forego preventive care and treatment for common chronic conditions such as asthma, diabetes, and hypertension because they simply cannot afford it." Huhn, op. cit., p. 300.

⁶²⁸ "A [...] major goal of the Affordable Care Act is to prohibit many of the predatory business practices of health insurance companies. Some of the predatory acts that will be prohibited are [the following]: denial of coverage to children under 18 with pre-existing conditions, lifetime caps on benefits, retroactive rescission of insurance when expensive illness occurs, some restrictions on annual limits, some controls on premium increases, medical loss, annual limits on coverage, denial of coverage for prior conditions." Dalen, op. cit., p. 576.

⁶²⁹ Obama makes explicit reference to this situation when he describes the case of Natoma Canfield (March 23rd, 2010).

In the three days when the parties presented their cases, Solicitor General Donald B. Verilli Jr., also used this type of argument to convince the justices: "he asked the justices to think how health coverage adds to the liberty of 'a husband whose wife is diagnosed with breast cancer and who won't face the prospect of being forced into bankruptcy to try to get care for his wife and face the risk of having to raise his children alone'." Troy, *Three Days*, op. cit., p. 29.

⁶³⁰ This is reflected in literature (Grisham's *The Rainmaker*), movies (*The Rainmaker*, *As Good as It Gets*, *Crash*) and the media; an example from the latter: "In July, a Reuters article focused on a 65-year old who delayed medical attention while her tumor grew to 51-pounds because she did not have insurance and Medicare would not take effect until she was 65. Interestingly, her physician stated that anyone with a medical condition should seek attention even if uninsured, although he was not sure if it would have cost this patient more money to do so. "Evelyn, New Jersey Woman, Has 51-Pound Tumor Removed After Delaying Treatment For A Month", *TheHuffingtonPost.com*, Reuters.

acceptable to acknowledge that there are 52 million people without health insurance⁶³¹ and that 8.1 million of them are children.⁶³² “These millions do not share the level playing field that those with health insurance enjoy. Those that become ill or injured do not have the path to achievement that hard work and individual initiative provide for the rest of us; instead they become mired in physical and economic difficulties caused by matters outside their control.”⁶³³

The choice to get insurance is not voluntary, not autonomous – it’s “less a limitation on individual choice and more as an alteration of the legal environment in which choices are made.”⁶³⁴ The “legal environment” is influenced by other environments such as the **social forces** at stake, **region, occupation, race and ethnicity and social and environmental health determinants, including legal determinants** (environmental, public health and health care laws).

The individual mandate, or rather, insurance mandates aim at having an impact on the mentioned environments: “[they] are designed to offset the costs faced by insurers as a result of the new requirements to insure individuals with pre-existing conditions and prevent consumers from

www.huffingtonpost.com/2012/07/05/evelyn-51-pound-tumor-removed-cancer_n_1647937.html

Posted: 07/03/2012 7:02 pm Updated: 07/06/2012 11:56 am

⁶³¹ “One recent study estimates that forty-three percent of uninsured Americans have enough disposable income to afford health insurance but voluntarily choose not to purchase it.” Patterson, op. cit., p. 2006.

⁶³² Coy, op. cit., p. 26.

⁶³³ Marshall, op. cit., p. 151.

⁶³⁴ Parmet, op. cit., p. 407.

abusing the new protections against those with pre-existing conditions;”⁶³⁵ “the individual mandate was not structured primarily to raise revenue, but rather to change the cost-benefit analysis associated with the purchase of health insurance. That is, the idea was to create a financial incentive for healthy individuals for whom the benefit of insurance is perceived to be less than its cost to purchase coverage.”⁶³⁶ Those “healthy individuals” are commonly known as free riders.

8.5 Free Riders

8.5.1. Introduction

The discussion on the feasibility of an individual mandate on health insurance leads to the inevitable reference to the existence of free riders.⁶³⁷

Patterson, Monahan and Hoffman provide definitions:

- “[They] are people with the financial ability to purchase health insurance [who] choose not to, knowing they can get emergency care when they need it. When they need expensive care and are unable to pay for it, the cost of their uncompensated care is shifted

⁶³⁵ Held, op. cit., p. 725.

⁶³⁶ Monahan, op. cit., p. 794.

⁶³⁷ Free riders are not only common in health care: “left to their own devices, many people will choose to go uncovered against fire, flood, car crashes, and cancer.” Coy, op. cit., p. 24.

to others through increased health insurance premiums and higher taxes.”⁶³⁸

- Free riders “within the medical system are those that consume medical services but do not pay for their care, shifting their costs onto providers, other consumers, and charitable organizations.”⁶³⁹
- “The inefficient use of care by the uninsured in emergency rooms, the cost of which is often externalized” is called free-riding.⁶⁴⁰

Hoffman describes the **free rider’s motivation**:

“As many as 17 million uninsured Americans are [...] ‘**voluntary opt-outs**,’ they could afford to buy insurance but are nonetheless uninsured. [...] They have made the decision not to purchase insurance, presumably because they perceive the cost to be higher than the benefits.”⁶⁴¹ Their choice may reflect a **legitimate trade-off** between health insurance and other needs they deem more important (**relatively high costs**). For others, it may be rooted in a perception that **they don’t need insurance (relatively low benefits)**. For the young uninsured, this way of thinking prompted the nickname ‘**invincibles**.’ [...] Many voluntary opt-outs could rationally decline insurance because premiums exceed the value of

⁶³⁸ Patterson, op. cit., p. 2008.

⁶³⁹ Monahan, op. cit., p. 788.

⁶⁴⁰ Hoffman, *Oil and Water*, op. cit., p. 27.

⁶⁴¹ Goff talks about steep prices: “Increasing lack of affordability is among the reasons people cite for moving into the ranks of the uninsured.” Op. cit., p. 85.

insurance to them individually, in which case paternalism cannot argue for compelling them to buy insurance.”⁶⁴²

Though experts refer to free riders as ‘voluntary’ opt-outs it could be argued that free riders do not have a real choice not to purchase health insurance. There is a **legitimate reason for the existence of free riders**. After all, who wouldn’t want to enjoy insurance or rather who wouldn’t want to live and work without running the risk of falling ill or suffering an injury with no insurance to pay for the expenses? Before the PPACA, health insurance companies could deny coverage or charge in excess due to pre-existing conditions or health status:

- “The individual mandate ensures that “insurers will no longer be able to choose whom they would insure and be able to exclude unhealthy nongroup applicants from coverage.”⁶⁴³
- “Requiring insurers to accept all applicants regardless of health condition was a primary goal throughout the legislative debates, and the Law accomplishes this single goal more than any other. PPACA makes insurance regulation a fait accompli, banning virtually all forms of medical screening or exclusions.”⁶⁴⁴

⁶⁴² Hoffman, *Oil and Water*, op. cit., p. 19.

⁶⁴³ Pitsenberger, op. cit., p. 167.

⁶⁴⁴ Hall, op. cit., p. 1851.

The PPACA precludes these traditional forms of underwriting which forced many individuals into waiting “to purchase health insurance until they needed care.” At the same time it compels free riders to change status: “a coverage mandate at least ensures that people who create the risks will bear the costs, on average, over time.”⁶⁴⁵

Interestingly enough, those opposing the PPACA also criticize the position of free-riders: “if something bad happens, they throw themselves on the mercy of society. The cruel solution would be to let them live (or die) on the streets. To our societal credit, we are unwilling to do this.”⁶⁴⁶

8.5.2 Statistics on the Effects of Free Riders - Costs

Hodgson explains the effects of free riding: “Their choices [free riders] to avoid participation in the insurance market affect the prices and availability of health coverage for others, directly impact population health outcomes, and substantially affect the **national economy**.”⁶⁴⁷

Section 1501 of the PPACA details the positive effect of the mandate on the market in order to prevent the effects of adverse selection:

“If there were no requirement [i.e. no mandate], many individuals would wait to purchase health insurance until they needed care”⁶⁴⁸

⁶⁴⁵ Coy, op. cit., p. 24.

⁶⁴⁶ Ibid.

⁶⁴⁷ Hodgson, op. cit., p. 399.

⁶⁴⁸ “A voluntary coverage system means that there will always be those who choose not to have health care coverage.” Goff, op. cit., p. 85.

By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will minimize this **adverse selection** and broaden the **health insurance risk pool** to include healthy individuals, which will lower health insurance premiums. The requirement is essential to creating effective health insurance markets in which improved health insurance products are guaranteed and do not exclude coverage of pre-existing conditions.” Adverse selection is indeed, a “dominant motivation for the individual mandate.”⁶⁴⁹

Hall describes the situation previous to the PPACA: Without the individual mandate, “many people would simply wait to purchase insurance until they needed care. This ‘**adverse selection**’ would force the price of insurance higher for sick people who want to maintain continuous coverage, thus making insurance even more unaffordable than it is currently, and leading more people to drop insurance even when they feel that they need it.”⁶⁵⁰

The individual mandate thus addresses the **free-rider problem** by decreasing the amount of uncompensated care that health care providers deliver to patients, i.e. by preventing **free riders** from getting away with not having insurance and having the rest who do (the insured) pay for their expenses. This should produce a **decrease in the average health insurance premium**. Due to these projected benefits, the individual

⁶⁴⁹ Monahan, op. cit., p. 787.

⁶⁵⁰ Hall, op. cit., p. 1841.

mandate is a central figure of the PPACA, since it is an “essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.”⁶⁵¹

The free rider’s decision has an **effect on those who do have insurance and on the market in general** in terms of costs. Justice Ginsburg explains how:

“In addition to the individual’s health consequences, being uninsured imposes significant **costs on society**. The uninsured often receive medical care from the most expensive places. As a result they are not able to adequately compensate their health care provider for the care they receive. The **cost of this uncompensated care** is shifted to others in the form of higher insurance premiums and higher taxes.”⁶⁵² An estimated **two to ten percent of the cost of private health insurance premiums cover uncompensated care for the uninsured**. Annually, uncompensated care accounts for about **three percent of health care** spending in the United States, **38 billion dollars per year**.⁶⁵³

⁶⁵¹ Baker, op. cit., p. 276.

⁶⁵² “Some are [...] angry that the uninsured don’t ‘pay their share,’ making insurance more expensive for everyone else. Their support for the mandate is animated by stories of the 28 year-old who decided he was healthy enough to ‘go bare’ without insurance coverage and then has a mountain biking accident that results in tens of thousands of dollars of emergency room care he can’t afford.” Hoffman, *Oil and Water*, op. cit., p. 10.

⁶⁵³ Justice Ginsburg in Patterson, op. cit., p. 2007.

More statistical data in this sense is provided by a **Congress Report**:⁶⁵⁴ “The **cost of providing uncompensated care to the uninsured** was \$43,000,000,000 in 2008. To pay for this cost, health care providers pass on the cost to private insurers, which pass on the cost to families. This **cost-shifting** increases family premiums by on average over \$1,000 a year.”⁶⁵⁵

Obama makes reference to the **\$1000** premium when he explains to the insured how the individual mandate is relevant to them:

- “If you already have health insurance, you're probably paying **\$1,000 premium** that you don't know about, every year, to help hospitals with uncompensated care; meaning, when people show up at the emergency room, who don't have health insurance, oftentimes hospitals treat them. The only way they can afford to treat them is by **indirectly charging all the other customers** who do have health insurance.”⁶⁵⁶
- “And by the way, that should save us all a lot of money. I mean, one of the toughest things about this health care debate was -- and sometimes I fault myself for not having been able to make the case more clearly to the country -- we spend, each of us who have health insurance, **spend about a thousand dollars of our premiums on**

⁶⁵⁴ 42 USC § 18091 - Requirement to maintain minimum essential coverage; findings.

⁶⁵⁵ Noting that nearly one-fifth of Americans are uninsured. US Census Bureau, “Current Population Reports, Income Poverty, and Health Insurance Coverage in the United States”, 2008, p. 23.

⁶⁵⁶ Obama Holds Teleconference on the Affordable Care Act. September 21st, 2010.

somebody else's care. What happens is, you don't have health insurance, you go to the emergency room. You weren't getting a checkup; something that might have been curable with some antibiotics isn't caught. By the time you get to the hospital, it's much more expensive. The hospital cares for you because doctors and nurses, they don't want to just turn somebody away. But they've got to figure out how do they keep their doors open if they're treating all these people coming in the emergency room. Well, what they do is they essentially pass on those costs in the form of higher premiums to the people who do have health insurance.”⁶⁵⁷

- “As we seek to contain the cost of health care, we must also ensure that **every American** can get coverage they can afford. We must do so in part because it is in all of our economic interests. Each time an uninsured American steps foot into an emergency room with no way to reimburse the hospital for care, **the cost is handed over to every American family as a bill of about \$1,000** that is reflected in higher taxes, higher premiums, and higher health care costs; a hidden tax that will be cut as we insure all Americans. And as we insure every young and healthy American, it will spread out risk for insurance companies, **further reducing costs for everyone.**”⁶⁵⁸

⁶⁵⁷ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

⁶⁵⁸ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

Baker specifies **how much those who have insurance have to pay to compensate for those who don't**, individually and globally: "You're paying a premium of \$235 every month for your private health insurance - \$70 of that goes directly to the uninsured, right now. The American taxpayer [is already paying] **\$50 billion for the uninsured**. Because we have legislation that if [you go] to the emergency room, you're taken care of. So we are already paying for a lot of care for the uninsured in a very indirect, untransparent, inefficient way."⁶⁵⁹

Hall specifies **how many receive this care**: "Overall, almost two-thirds (62,6%) of people who are uninsured at a given point in time had at least one visit to a doctor or emergency room within a prior year. [...] 94% receive some level of medical care at some point;"⁶⁶⁰ and the Institute of Medicine specifies **how much the uninsured has to pay for the care received**: "For this care uninsured people pay for only about a third of the overall costs of the services they receive; the rest is paid by the government, charity, or cost shifting to insured patients."⁶⁶¹

⁶⁵⁹ Bill Frist in Charles D. Baker., Arthur Caplan and others, "Health of the Nation Coverage for All Americans", Shattuck Lecture, *The New England Journal of Medicine. Perspective*, August 21, 2008.

⁶⁶⁰ Hall, op. cit., p. 1832.

⁶⁶¹ Institute of Medicine, "Insuring America's Health: Principles and Recommendations 50-51", 2004.

8.5.3 Adverse Selection and the Death Spiral

Adverse selection is defined by Lawrence and Skocpol: it “happens when insurance plans become lopsided with seriously ill people who are costly to treat.”⁶⁶²

Hoffman uses the image of a pool, a risk pool to define **adverse selection**: “[it] refers to the ability of well-balanced risk pool to devolve into a pool composed mainly of high-risk individuals. [...] It is regarded as the major market failure of insurance markets.”⁶⁶³ “It occurs when individuals with high health risks enrol disproportionately in insurance plans, driving up the cost of those plans.”⁶⁶⁴

Obama makes reference to the need to broaden the health insurance risk “pool”: “If you don’t have insurance, this reform gives you a chance to be a part of a **big purchasing pool** that will give you choice and competition and cheaper prices for insurance. And it includes **the largest health care tax cut for working families and small businesses in history** -- so that if you lose your job and you change jobs, start that new business, you’ll finally be able to purchase quality, affordable care and the security and peace of mind that comes with it.”⁶⁶⁵

Experts **detail the way the mandate’s effect on adverse selection will work on the market**. Proponents of an individual mandate

⁶⁶² Lawrence and Skocpol, op. cit., p. 91.

⁶⁶³ Hoffman, *Oil and Water*, op. cit., p. 27.

⁶⁶⁴ Ibid., p. 832.

⁶⁶⁵ Obama Makes Remarks after House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21st, 2010.

for health insurance believe that it will effectively address **the cost and coverage concerns** that drove the push for health care reform by **improving cost distribution**: “Requiring individuals to purchase health insurance will address the **problem of adverse selection** by forcing healthy people into **insurance risk pools**.” The way to force these people is by offering options: “In a voluntary system these people should be offered incentives to purchase insurance by lowering premium rates.”⁶⁶⁶

The existence of free riders does not only affect the individual, the “free rider” but also creates an **imbalance in the market**. Congress is brief and concise in summarizing the effect of the “requirement” i.e. the individual mandate on the market: “By significantly reducing the number of the uninsured, the requirement, together with the other provisions of this Act, will lower health insurance premiums.”⁶⁶⁷

The individual mandate aims at tackling the **de-stabilizing effect** free riders have on the market which ends up creating a spiral; free riders choose not to purchase health insurance. These uninsured persons who avoid purchasing health insurance are “pivotal actors in the larger economy and significant contributors to the **vast public health and economic costs** of lack of access to health care services.”⁶⁶⁸ The mandate stops the practice of healthy individuals “to delay purchasing health insurance until they require medical care, resulting in **risk pools with a disproportionate share of high-risk people**. The price of insurance will then climb, causing

⁶⁶⁶ Hoffman, op. cit., p. 101.

⁶⁶⁷ Congress report 42 USC § 18091 - Requirement to maintain minimum essential coverage; findings. Current through Pub. L. 112-238
<http://www.law.cornell.edu/uscode/text/42/18091>

⁶⁶⁸ Hodgson, op. cit., p. 399.

more and more not-so-sick people to forego health insurance. The resulting ‘**death spiral**’ will make insurance unaffordable to many more Americans.”⁶⁶⁹

Pitsenberger further explains the dynamics of this spiral: “This process, if followed out to its logical and inevitable conclusion, is described as a ‘death spiral’ in actuarial circles –as the average risk of the group increases, those with slightly better than average risk opt out, increasing the average risk of the group in a cyclical pattern. Ultimately, the cost of insurance for those persons remaining in the community pool increases so much that it ceases to function as insurance at all- the cost becomes so high as to convince them that there is no risk function occurring at all, and they drop coverage.”⁶⁷⁰ This was, in fact, a topic in Senate hearings on health care reform: Such an approach [of requiring insurers to cover everyone sans the individual mandate, i.e. the requirement to purchase] would invite egregious adverse risk selection on the part of the insured, who could afford to go without insurance when healthy in the comfort of knowing that they are entitled to health insurance at a community-rated premium when sick. As every economist and actuary appreciates, this type of adverse risk selection ultimately leads to the so-called “**death-spiral**” of the community-rated risk pools.”⁶⁷¹

⁶⁶⁹ “The choices individuals exercise regarding insurance are deeply affected by – and affect- the decisions of others.” Parmet, op. cit., p. 407.

⁶⁷⁰ Pitsenberger, op. cit., p. 153.

⁶⁷¹ Statement of Uwe Reinhardt, Professor, Woodrow Wilson School of Public and International Affairs, Princeton University, “Health Care Reform: An Economic Perspective: Hearing Before the Senate Finance Committee”, 110th Congress 6, 2008.

Krugman argues that this effect is mitigated by the individual mandate: “If Congress didn’t [...] require that healthy people buy insurance, there would be a **‘death spiral’**: healthier Americans would choose not to buy insurance, leading to high premiums for those who remain, driving out more people, and so on.”⁶⁷²

Experts agree on **the need to include everybody in this pool to avoid the effects of adverse selection; what the mandate does is precisely to enforce such inclusion:**

- “Those who choose to self-insure reduce the total number of people in an insurance plan. A **smaller pool of insured individuals** results in less people to spread costs amongst, which forces insurers to raise premiums.”⁶⁷³
- Pariser and Huhn talk about **spreading the costs**: For the system to function properly, everyone, particularly the young and healthy who do not consume as many services,⁶⁷⁴ must be required to purchase insurance and be in the system to further spread the costs.”⁶⁷⁵
- “The only way for average people to gain access to medical care is **if costs are spread across society** – for all persons to be covered and for all persons to contribute to paying the cost of medical care.

⁶⁷² Paul Krugman, Op-Ed., “Do the Right Thing”, *N.Y. Times*, A31, Jan 22, 2010.

⁶⁷³ Baker, op. cit., p. 276.

⁶⁷⁴ Commonly known as “invincibles”.

⁶⁷⁵ Pariser, loc. cit.

That is the principal purpose of the PPACA, which extends government-funded medical care to the poor and which promises to bring private health insurance within the grasp of middle-class families. [...] By combining tens of millions of individual Americans into large groups, it will increase their purchasing power as well as the bargaining power of insurance companies to negotiate lower rates with providers, which should operate to reduce the cost of medical care for everyone.”⁶⁷⁶

- Goff puts it this way: “Many crucial health care system reforms are not possible without all people participating in the sharing of health care risk. This is why an individual mandate that all people have coverage is the key to successful and sustainable system-wide reform. The basic premise of health insurance is that healthy people with low risk of incurring health care expenses are pooled with people with higher health care risk. For health insurance to work, **healthy people must join the insurance pool** before they actually have need of medical care so that these ‘healthy dollars’ can be used to supplement the dollars being used to care for the sick.”⁶⁷⁷

Goff specifies why implementing these measures is important: “In the United States, sharing in overall cost of care is voluntary because people can choose not to have health care insurance, but they are still guaranteed care when they need it from hospitals because they are

⁶⁷⁶ Ibid., p. 335.

⁶⁷⁷ Goff, op. cit., p. 86 – 100.

required by federal law to give care to all who request it in their emergency rooms. These hospitals must find other means to recoup the cost of this uncompensated care.”⁶⁷⁸ Health insurance premiums should decrease as insurance companies are able to spread the risk posed by seriously ill enrollees across a larger number of healthy individuals.

8.5.4 Effect of the Individual Mandate on the Insurance Market

Hoffman specifies **how the individual mandate will affect the insurance market:**

“The individual mandate will channel the uninsured into what has become a fragmented American health insurance market. **Fragmentation** is a word often used to characterize American health care, describing the decentralization of decision makers, payer, provider, or regulation. [...] Fragmented [describes] the splintering of insurance markets into smaller parts to divide people and groups up on the basis of risk. Insurance markets have become atomized into smaller sub-markets in the name of managing and avoiding risk. This process of insurance market fragmentation has reduced the breadth of risk pooling and lays the groundwork for inequities among markets and insureds.”⁶⁷⁹

⁶⁷⁸ Ibid., p. 86.

⁶⁷⁹ Hoffman, *Oil and Water*, op. cit., p. 17.

8.5.5 Effect of the Individual Mandate on the Free Riders' Economy

The individual mandate ensures that “insurers will no longer be able to choose whom they would insure and be able to exclude unhealthy nongroup applicants from coverage.”⁶⁸⁰ This is of utmost importance since a mandate solely aimed at insurers i.e. with disregard to the rest of the population, would not get the same favourable results: “Wachenheim’s study of eight states in the United States that had enacted Laws requiring that insurers accept all individuals regardless of health care risk (called ‘guaranteed issue’) but without a requirement that people get coverage showed that “the individual market in all eight states deteriorated, and, in most cases, the public policy decision to require insurers to guarantee issuance of individual coverage was modified or repealed.”⁶⁸¹

Hoffman argues that once the individual mandate comes into force former free riders will become “financiers;” this will have a radical effect on the market:

“When the mandate compels the 17 million voluntary opt-outs to buy insurance, they not only become consumers of health insurance, many will also become **financiers of health care for others**. [...] Any surplus that the voluntary opt-outs pay in

⁶⁸⁰ Pitsenberger, op. cit., p. 167.

⁶⁸¹ Goff, op. cit., p. 101 quoting Leigh Wachenheim et al., *The Impact of Guaranteed Issue and Community Rating Reforms on Individual Insurance Markets*, Milliman, Inc. 2, July 10, 2007. The eight states were Kentucky, Maine, Massachusetts, New Hampshire, New Jersey, New York, Vermont and Washington.

premiums over expenses is the contribution they make as financiers of health care. Because they are healthy (rich in terms of the resource of health), they are compelled to bankroll care for people sicker than themselves. This investment may pay back in a year when they are sick and consume more care than what they pay in premiums, or it may not. [...] While I use the term ‘financier’ to describe these net contributors, I do so with a sense of irony and caution. [...] It is clear that we would not consider many ‘financiers’ rich. They are often young and just beginning their careers or at an income level where the cost of insurance deters purchase, raising questions about the fairness of compelling them to finance others’ care.”⁶⁸²

8.5.6 Obama Reference to Free Riders

Obama does not use the words “individual mandate” and uses the term “**responsibility**”⁶⁸³ instead to refer to the moral duty of the free rider to purchase insurance and thus cease in her/his risky situation:

“Today, the Supreme Court also upheld the principle that people who can afford health insurance should **take the responsibility to buy health insurance**. This is important for two reasons. First, when uninsured people who can afford coverage get sick, and show up at

⁶⁸² Ibid., p. 21.

⁶⁸³ This fact is further explained in chapter 8.

the emergency room for care,⁶⁸⁴ the rest of us end up paying for their care in the form of higher premiums. And second, if you ask insurance companies to cover people with preexisting conditions, but don't require people who can afford it to buy their own insurance, **some folks might wait until they're sick to buy the care they need -- which would also drive up everybody else's premiums.**"⁶⁸⁵

He also foresees the possible reaction from those who remain determined not to get insurance and the nefarious consequences of their staunch position:

"Now, even if we provide these **affordable options**, there may be those, and especially the young and the healthy, who still want to take the risk and go without coverage. There may still be companies that refuse to do right by their workers by giving them coverage. The problem is, such **irresponsible behavior** costs all the rest of us money. If there are affordable options and people still don't sign up for health insurance, it means we pay for these people's expensive emergency room visits. If some businesses don't provide workers health care, **it forces the rest of us to pick up the tab** when their workers get sick, and gives those businesses an unfair advantage

⁶⁸⁴ "Federal requirements and good conscience allow people without insurance to receive care when they need it regardless of ability to pay." Goff, op. cit., p. 85.

⁶⁸⁵ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room. June 28th, 2012. 12:15 P.M. EDT.

over their competitors. And unless everybody does their part, many of the insurance reforms we seek, especially requiring insurance companies to cover preexisting conditions, just can't be achieved. That's why **under my plan, individuals will be required to carry basic health insurance** -- just as most states⁶⁸⁶ require you to carry **auto insurance**. Likewise -- likewise, **businesses** will be required to either offer their workers health care, or chip in to help cover the cost of their workers. But... But we can't have large businesses and individuals who can afford coverage game the system by avoiding responsibility to themselves or their employees. Improving our health care system only works if **everybody does their part**. And while there remains some significant details to be ironed out, I believe... I believe a broad consensus exists for the aspects of the plan I just outlined: **consumer protections** for those with insurance; **an exchange** that allows individuals and small businesses to purchase affordable coverage; and **a requirement** that people who can afford insurance get insurance. And I have no doubt that these reforms would greatly **benefit Americans from all walks of life**, as well as the economy as a whole."⁶⁸⁷

⁶⁸⁶ New Hampshire and Virginia don't.

⁶⁸⁷ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

8.5.7 The Already-Insured Maintain Their *Status Quo*

The individual mandate only applies to those who do not count with health insurance. Justice Ginsburg establishes that: “indeed the government will not force insurance on anyone. And individuals remain perfectly free to ‘choose’ to pay the penalty rather than purchase insurance.”⁶⁸⁸

Those that do have insurance, Obama insists, will be able to maintain their *status quo*;⁶⁸⁹ if anything, they will see their *status quo* being improved in terms of security, affordability, stability and control:

- a. So let me begin by saying this: I know that there are millions of Americans who are content with their health care coverage – they like their plan and they value their relationship with their doctor. And that means that no matter how we reform health care, we will keep this promise: If you like your doctor, you will be able to keep your doctor. Period. If you like your health care plan, you will be able to keep your health care plan. Period. No one will take it away. No matter what. My view is that health care reform should be guided by a simple principle: **fix what's broken and build on what works.** [...] So, we need to do a few things to provide affordable health insurance to every single

⁶⁸⁸ Parmer, op. cit., p. 404.

⁶⁸⁹ Moreover, “the mandate is not enforceable by criminal prosecution.” Ibid.

American. The first thing we need to do is protect what's working in our health care system. Let me repeat – **if you like your health care, the only thing reform will mean is your health care will cost less.** If anyone says otherwise, they are either trying to mislead you or don't have their facts straight.”⁶⁹⁰

- b. First, **if you're one of the more than 250 million Americans who already have health insurance, you will keep your health insurance** -- this law will only make it **more secure and more affordable.** Insurance companies can no longer impose lifetime limits on the amount of care you receive. They **can no longer** discriminate against children with preexisting conditions. **They can no longer** drop your coverage if you get sick. They **can no longer** jack up your premiums without reason. They are required to provide **free preventive care** like check-ups and mammograms -- a provision that's already helped 54 million Americans with private insurance. And by this August, nearly 13 million of you will receive a rebate from your insurance company because it spent too much on things like administrative costs and CEO bonuses, and not enough on your health care.”⁶⁹¹

- c. First, if you are among the hundreds of millions of Americans who already have health insurance through your job, or

⁶⁹⁰ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

⁶⁹¹ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room. June 28th, 2012. 12:15 P.M. EDT

Medicare, or Medicaid, or the V.A.,⁶⁹² nothing in this plan will require you or your employer to change the coverage or the doctor you have. Let me -- let me repeat this: nothing in our plan requires you to change what you have. [...] It will provide more **security and stability** to those who have health insurance. It will provide insurance for those who don't. And it will slow the growth of health care costs for our families, our businesses, and our government.”⁶⁹³

- d. If you have health insurance, **this reform just gave you more control** by reining in the worst **excesses and abuses of the insurance industry** with some of the toughest consumer protections this country has ever known -- so that you are actually getting what you pay for.”⁶⁹⁴

So the mandate established by the PPACA is an order for some, a request for others. Order for some since the critics of the Law consider that the PPACA is trumping on the individual's right to decide whether to agree to a contract. Request for others since it allows those with a health care plan arranged before the law not to modify it. This is paramount since previous proposals to achieve universal coverage have been scuttled by “the interference such proposals would work on existing insurance programs – programs with which people are at least moderately satisfied.

⁶⁹² Veterans Affairs.

⁶⁹³ Obama's Health Care Speech to Congress. September 9th, 2009.

⁶⁹⁴ Obama Makes Remarks after House Passes Health-Care Legislation. East Room. White House. Washington, D.C. March 21st, 2010.

That interference, that disruption of satisfaction, would be most marked in those persons for whom such a return to community rating caused an increase in premiums.”⁶⁹⁵

8.6 Expansion of Coverage Under Medicaid

Access to health insurance as envisaged by the PPACA should be improved by enforcing the individual mandate and by expanding current public programme Medicaid. The constitutionality of these two key tools was questioned before the Supreme Court. The consequence of expanding Medicaid affect aspects already dealt with: *inter alia*, individual rights, the role of the Constitution, the role of government and the relation between the federation and the states: this expansion which is regarded by some as an intrusion of the federation in the power of the states also entails an increase in costs, which some consider unnecessary and disastrous.

8.6.1 Is Medicaid Expansion Constitutional?

The PPACA expands coverage under Medicaid to individuals with “incomes up to 133% of the federal poverty line,”⁶⁹⁶ which is projected to provide coverage to an additional 16 million Americans.”⁶⁹⁷

Obama refers to this expansion with great momentum:

⁶⁹⁵ Pitsenberger, op. cit., p. 171.

⁶⁹⁶ familiesusa.org/resources/tools-for-advocates/guides/federal-poverty-guidelines.html

⁶⁹⁷ Sheen, op. cit., p. 1737.

- “We're going to expand Medicaid to make sure that you're able to have somewhere to go. **Sixteen million Americans will be newly eligible for Medicaid services in 2014**”⁶⁹⁸ which Troy refers to “the Law’s vast expansion of Medicaid, the health-care program for the poor.”⁶⁹⁹
- And for those that are unable to afford the private insurance, you'll have a real safety net by making sure that Medicaid is expanded. [...] Today, there are roughly 60 million Medicaid recipients, but there are millions more that are eligible. What we're trying to do through the Affordable Care Act is expand Medicaid to make sure that **everyone living below 133 percent of poverty -- that's \$14,400 for an individual, or about \$28,000 for a family of four -- has a real safety net.** [...] Today's Medicaid program is tremendously helpful for families that have children, or for pregnant women. But if you're a single man with no children, it's very difficult to find affordable health-care coverage. We're going to expand Medicaid to make sure that you're able to have somewhere to go. Sixteen million Americans will be newly eligible for Medicaid services in 2014. That's -- I mean, that's really what the Affordable Care Act is all about. I think it's giving Americans, again, back the

⁶⁹⁸ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

⁶⁹⁹ Troy, *Three Days*, op. cit. p. 29.

control of the system that should be responsive to their needs all along.⁷⁰⁰

For some the **constitutional validity of Medicaid expansion** is the most important question of the four the Supreme Court had to answer⁷⁰¹ because it breaches the traditional line between offering financial inducement to states and imposing coercive conditions on them to participate in federal programs: “it imposes on states to either adopt federal rules or lose all ‘federal Medicaid dollars’.”⁷⁰²

This expansion was naturally contested by states since the Statute (the PPACA) requires them to cover that expansion or else lose all of their Medicaid funding: “the new Medicaid requirements [...] ‘coerce’⁷⁰³ state functions and exceed federal authority. Because they would lose all Medicaid funding by not participating and the amount at stake would be critical to caring for vulnerable populations, the states believe that practically speaking, they would not actually have a choice and would feel compelled to participate.”⁷⁰⁴ Rabkin does not talk about **coercion** but does talk about ‘**inducement**’ to expand coverage under the new law which is tantamount “to threaten the withdrawal of federal assistance for Medicaid –

⁷⁰⁰ Obama holds teleconference on Affordable Care Act. September 21, 2010.

⁷⁰¹ It is clearly “the most important question to hospitals- is the Medicaid expansion question.” “... even though Medicaid doesn’t pay hospitals everything that hospitals wish it would, it still is a big part of the revenue of many hospitals, and I think this is an existential threat to Medicaid in this country.” Jost, op. cit., p. 28.

⁷⁰² Troy, *Three Days*, op. cit. p. 29.

⁷⁰³ However, “no court has ever struck down a federal statute based on the coercion theory.” Ibid, p. 28.

⁷⁰⁴ Sheen, op. cit., p. 1738.

upon which states have come to rely- unless states commit to wider coverage with vastly increased costs.”⁷⁰⁵

Conservative voices consider this expansion unconstitutional as well: if such coercion is permissible, then “there is no effective limit on congressional power to force States to cater to federal demands; the Tenth Amendment,⁷⁰⁶ reserving some powers to the States and the people, is a dead letter.”⁷⁰⁷ Endorsing this aspect of the PPACA would turn the Constitution into “an open-ended charter of coercion” –so that the federal government could do anything that policymakers favoured at a given moment; this would “deny ... [the American people] the benefits of constitutional government.”⁷⁰⁸

In the same sense: “it forces them [states] to carry out responsibilities for the federal government, which, under our Constitution, the federal government could not directly require.”⁷⁰⁹

Other voices, more moderate, claim that the PACCA does not alter Medicaid’s “fundamental status as a voluntary program;”⁷¹⁰ “nothing about this latest Medicaid expansion is different from past expansions, other than the fact that it passed as part of a broader health care reform effort.”⁷¹¹

⁷⁰⁵ Rabkin, op. cit., p. 160.

⁷⁰⁶ 10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

⁷⁰⁷ Rabkin, op. cit., p. 170.

⁷⁰⁸ Ibid., p. 160.

⁷⁰⁹ Jost, loc. cit.

⁷¹⁰ Sheen, op. cit., p. 1738.

Valauri explains that the root of state opposition is in the Constitution (10th Amendment)⁷¹² and that it applies to individuals despite having been drafted in the “context of federal regulation of the states”⁷¹³ rather than of individuals.”⁷¹⁴

Professors Randy Barnett and David Oedel argue that the PPACA’s Medicaid expansion violates the **general welfare requirement**; and they provide the following case example: “Texas might be allowed to withdraw from Medicaid, but Congress will simply send the Medicaid portion of its citizens’ federal tax payments (Texan payments) to the 49 other states. Texas citizens would receive nothing in return.”⁷¹⁵ The resulting constitutional difficulty is that “Medicaid would no longer be spent in support of the general welfare of each and every one of the states.”⁷¹⁶

Opponents of the PPACA turned to the federal courts to challenge the constitutionality of the legislation.

The Court further applied the federal disability to the **Necessary and Proper Clause**: any law executing the Commerce Clause that violates

⁷¹¹ Jost, loc. cit.

⁷¹² Valauri, op. cit., p. 602.

⁷¹³ In the context of states, Congress “may offer incentives for state action [...] but may not coerce state action.” Valauri, op. cit., p. 602. This is established by the Court in *New York v. United States*, 505, U.S. 144, 1992: “Congress may not compel states to enact or enforce a federal regulatory program but may incentivize its adoption.”

⁷¹⁴ Valauri, op. cit., p. 602.

⁷¹⁵ Randy E. Barnett and David G. Oedel, “ObamaCare and the General Welfare Clause”, *Wall Street Journal*, Eastern edition, New York, N.Y., 27 December 2010, p. A17.

⁷¹⁶ Hoffmann, op. cit., p. 842.

the **principle of state sovereignty** is not a “Law [...] proper for carrying into execution the Commerce Clause.”⁷¹⁷

The Supreme Court upheld the individual mandate (5-4) on the basis that it is a tax rather than protection under the Commerce Clause, but determined that **States could not be forced to participate in the expansion of Medicaid**. All provisions of the PPACA will continue in effect or will take effect as scheduled subject to States determination on Medicaid expansion.

8.7 Conclusion

The situation of both the uninsured and free riders is addressed by the PPACA and dealt with by means of the enforcement of an individual mandate. This chapter explores the economic grounds to change the situation of these key population subgroups. Including them in the insurance pool will benefit the rest who won't have to compensate their lack of insurance by having their premiums increased. In effect, enforcement of the individual mandate will reduce the death spiral and benefit the common good. Moreover, the situation of these people is also related to concepts of American exceptionalism from the moment the decision to purchase health care is up to the individual. The individual's decision affects the rest. Thus a decision should always be made bearing in mind which value should trump: individualism i.e. the individual's decision not to purchase insurance v. the collective, general good of the people. The next chapters examine these

⁷¹⁷ *Printz v. United States*, 521 U.S. 898, 923 – 924, 1997.

key issues. Moreover, Medicare expansion is analyzed in this chapter as a means to improve access to health care. This expansion affects the relationship between the federation and the states, which is an aspect of American exceptionalism: the States are as sovereign as the Federation. Hence the legitimacy of individual States to challenge the PPACA.

9 Individual Rights and Distrust of Government

Individualism is a mature and calm feeling, which disposes each member of the community to sever himself from the mass of his fellows, and to draw apart with his family and his friends; so that, after he has thus formed a little circle of his own, he willingly leaves society at large to itself.

Alexis de Toqueville. *Democracy in America*. 1835.

Washington may think that saying anything about the other side, no matter how false, is just part of the game. But it is precisely such politics that has stopped either party from helping the American people. Worse yet, it is sowing further division among our citizens and further distrust in our government.

State of the Union Address. Washington, D. C.

January 27, 2010.

9.1 Introduction

This chapter studies an argument used time and again by those against the PPACA and its individual mandate. Forcing to purchase health insurance is against the individual's right to remain uninsured; after all, **individualism** is the cornerstone of the American creed. Those in favour of the PPACA though acknowledging this fact, claim that the situation is so

painful for so many American citizens that it is time to give priority to other principles equally American such as **collective action** in order to have all Americans pulling together in times of need under the direction of the President.

Enforcement of the individual mandate is the duty of government. This chapter analyses the scope of the role of government in imposing it. It also analyses the hurdles established by the Constitution on the government in order to prevent what would be an unconstitutional trespassing on individual rights. In effect, it explores the relationship between the individual and the government.

9.2 Origin of Individualism. Decline of Rugged Individualism and the Parallel Prevalence of Collectivism

America's individualism developed as a consequence of the need to settle **the frontier**. The frontier is key then for the study of American exceptionalism.⁷¹⁸ In discussing the role of the frontier in the development of the United States, Wrobel quotes Brooks Adams among "those intellectuals who formulated **frontier-based arguments for expansion**:"⁷¹⁹ "he declared that civilization has always advanced by two processes –**the individual and the collective**. The eastern races had tended toward collective systems, the western toward individualistic ones. The Anglo-

⁷¹⁸ "[It's] vital to the question of American self-esteem." Ibid., p. vii.

⁷¹⁹ "The latest generation of western historians views the white advance across the continent as anything but beneficent for the nation, the physical environment, or the numerous minority elements on the western frontier." Wrobel, op. cit., p. vii.

Saxon was the most individual of all races and had reached this high fortune under conditions that fostered **individualism** to a supreme degree. These conditions had prevailed when the world was vacant, but now that population was becoming denser, the qualities of the pioneer would cease to command success and collectivist systems would prevail.”⁷²⁰ He concludes by asserting that **the decline of rugged individualism gave way to a parallel prevalence of the mentioned “collectivist systems.”**

9.3 Individualism, Collectivism and Health Care

Marshall examines the importance of collectivism in health care:

“Even if we celebrate the individual as master of her fate, the individual is not, after all, master of her own health. Developments in transportation and population growth [...] make our respective medical conditions interdependent on each other. [...] We can no longer completely insulate ourselves from the effects of others’ health. [...] **The economics of health care are not insular to the individual.** The individual’s health care decisions affect the price, quality, and availability of health care products and services for all the people around him.”⁷²¹

⁷²⁰ Ibid., p. 65.

⁷²¹ Marshall, op. cit., p. 144.

Free riders are used as an example of such interdependence in economics: “The individual’s decision not to buy health insurance raises the costs of health care for all of those around him, particularly if he is not able to independently pay for all of his eventual health care.”⁷²² The bankruptcy that a person suffers because she was not able to pay her medical bill affects her neighbours and her community. Health care, in short, is the classic example of something which we are, in fact, **all in together**.⁷²³

Obama addresses this issue as well:

“Our collective failure to meet this challenge [comprehensive health care reform] year after year, decade after decade, has led us to the breaking point. Everyone understands the extraordinary hardships that are placed on the uninsured who live every day just one accident or illness away from bankruptcy. These are not primarily people on welfare. These are middle class Americans. Some can't get insurance on the job. Others are self-employed and can't afford it since buying insurance on your own costs you three times as much as the coverage you get from your employer.”⁷²⁴

In this sense Huhn is unequivocally conclusive: “The greatest challenge we now face is to make high quality medical care available to every American. It is becoming apparent that we can achieve this goal only

⁷²² Before EMTALA (Emergency Medical Treatment and Active Labor Act) was passed in 1986, hospitals could actually turn away indigent patients who had no money to pay for their emergency care.

⁷²³ Marshall, op. cit., p. 144.

⁷²⁴ Obama’s Health Care Speech to Congress. September 9th, 2009.

through **collective action**. The free market is superb at stimulating investment and innovation, but it has proven incapable of delivering medical care to all who need it. For everybody to have access to medical care, everybody must help to pay for it.”⁷²⁵ She concludes that “we must now learn how to distribute [the blessings of technological advances in the fields of medical care] to every American citizen.”⁷²⁶ This will require “**cooperative effort** to an extent that is unprecedented in American history. That is the **newest frontier** for us to conquer.”⁷²⁷

Unfortunately, Berman argues, the PPACA follows an **individualist paradigm** where the target is the individual patient; as opposed to a broader “public health paradigm which look[s] beyond the individual patient and tr[ies] to uncover and address the population-level factors that contribute to poor health.”⁷²⁸

He goes on to argue that the individualist paradigm is deeply attached to the American culture and society,⁷²⁹ “to a **political ideology of limited government and individual liberty**,” “to a cultural emphasis on **personal responsibility**,” to the existence of “influential disease-promoting industries.” This leads to a situation where opponents of insurance mandate concede that the law will reduce the number of uninsured, “but [...] still oppose it for **ideological reasons** related to **their conception of the**

⁷²⁵ Huhn, op. cit., p. 301.

⁷²⁶ Ibid.

⁷²⁷ Ibid.

⁷²⁸ Berman, loc. cit.

⁷²⁹ “This paradigm dominates our collective understanding of public health issues.” Ibid., p. 329.

proper role of government. Ancillary to such ideological arguments, opposition to government regulation is often framed as concern about a ‘slippery slope’ towards **more invasive and burdensome government regulation.**”⁷³⁰

With regard to **disease-promoting industries** (related to the major public challenges of our era, i.e. obesity, tobacco use, and alcohol abuse) Berman claims that they have a “**vested interest in making the public less healthy**”;⁷³¹ **and this leads to promoting and reinforcing an individualistic perspective in the law being “churned” in Congress.** These industries carry out powerful lobbying operations in Washington that can put pressure on members of Congress in numerous ways. This is the another reason why the public health paradigm is rarely reflected in the current policy-making.

The alternative to the individual paradigm is the **public-health paradigm** which “emphasizes the environmental and social determinants of health and how they affect the well-being of populations [and not just individuals], and leads to policy interventions designed to address the population-level structures contributing to poor population health.”⁷³²

⁷³⁰ Ibid.

⁷³¹ “Industries that contribute to poor health have a strong interest in promoting and reinforcing an individualistic perspective in the law. These industries committed massive resources toward defending themselves in court and strategically shaping the common law in way that further the interests. Tobacco companies, for example, have relied heavily on individualistic legal constructs of ‘assumption of risk’ to avoid liability for harm is caused by smoking, downplaying the wall in recruiting and addicting non-smokers (as well as the adverts to promote smoking as a cultural norm). As I once had a secret memo written by the law firm of Jones Day to its tobacco industry clients stated, “the key defence strategy in smoking and health litigation is (and must be) *to try the plaintiff*.” Berman, op. cit. p. 329.

⁷³² Ibid, p. 329.

Again, “unfortunately,” Berman laments, the PPACA⁷³³ largely ignores “social, economic, and environmental constraints that limit people’s ability to make healthier choices” and focuses on the individual instead: “maintaining good health is primarily a matter of individual decision making, or, as it is often framed, **personal responsibility**. The Act conceptualizes the source of these problems as the **lack of adequate information**, and it prescribes more information as the remedy.”⁷³⁴ In this sense, the PPACA funds an educational campaign “to encourage ... healthy behaviours linked to chronic disease;”⁷³⁵ it provides funding for community health centers⁷³⁶ to develop individualized wellness plans for clients that address issues such as exercise, nutrition, and substance abuse.

Berman acknowledges however, that the PPACA provides a wonderful opportunity to introduce small measures aimed at changing the way the public conceptualise **preventive health issues**. The notion that **personal responsibility** is the key to health is deeply ingrained in American culture, and well-funded interests have a stake in ensuring that this remains the case. He is concise in the measures that need to be taken: “What is needed is not simply a messaging plan, but a long-term movement geared towards **reorienting the cultural norms** relating to public health

⁷³³ “In 2009 and 2010, as Congress considered (and reconsidered and reconsidered) a fundamental restructuring of the health care industry, one question was notably missing from the national debate: how can we keep people from getting sick? Although ‘bending the cost curve’ became a frequently-repeated catchphrase, the focus was on reducing the cost of medical treatment, not on preventing or reducing the occurrence of chronic diseases.” Ibid., p. 353.

⁷³⁴ Ibid., p. 330.

⁷³⁵ Ibid.

⁷³⁶ Sec. 10503 of the Law: *Community Health Centers and the National Health Service Corps Fund*.

issues. In this effort, the legal community, and the legal academy in particular, has a crucial role to play. Clearly defining public health law as a distinct academic discipline may help prompt more scholarship geared towards addressing the challenges to 'public health reform.'"⁷³⁷

Obama makes reference to the importance of preventive medicine, one of the pillars of the reform, but the approach is solely individual:

- "The second step that we can all agree on is to invest more in **preventive care** so that we can avoid illness and disease in the first place. That starts with each of us taking more responsibility for our health and the health of our children. It means quitting smoking, going in for that mammogram or colon cancer screening. It means going for a run or hitting the gym, and raising our children to step away from the video games and spend more time playing outside."⁷³⁸
- "And insurance companies will be required to cover, with no extra charge, routine checkups and preventive care, like mammograms and colonoscopies. Because there's no reason we shouldn't be catching diseases like breast cancer and colon cancer before they get worse. That makes sense. **It saves money, and it saves lives.**

⁷³⁷ Berman, loc. cit.

⁷³⁸ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House. Washington, D.C. June 15th, 2009.

That's what Americans who have health insurance can expect from this plan: more security and more stability.”⁷³⁹

- “We're going to help **88 million people to get the preventive care** they need to stay healthy, by requiring many insurers to cover recommended preventive services.”⁷⁴⁰
- “Preventive care will now be offered under your policy, which, over the long term, can actually save people money because **you get diagnosed quicker**.”⁷⁴¹
- “The second thing that we're already doing is **all the policies now are going to cover preventive care**. So getting a mammogram, that's got to be part of your policy, and you no longer have to pay significant out-of-pocket costs that may dissuade you from getting the kind of preventive care that you need. And if you're a medical student, you know better than I do that so much of keeping ourselves healthy is knowing what's going on and going in and getting regular checkups and being able to monitor your health.”⁷⁴²

⁷³⁹ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

⁷⁴⁰ Obama Holds Teleconference on the Affordable Care Act. September 21st, 2010.

⁷⁴¹ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

⁷⁴² Ibid.

9.4 Individual Rights in the Constitution and the PPACA

Constitutionalists examine whether the PPACA infringes the rights of the individual as established in the Constitution. Brennan starts with the concept of sovereignty to justify regulation by the PPACA:

“Under current American constitutional jurisprudence, ‘sovereignty’ is predicated of four very different entities: the nation, each state, the people, and the individual.” He analyses **sovereign individuals** and establishes that **“individuals are meaningfully sovereign [when] they are subject to legal regulation.”** Thus, **“a presumption in favour of liberty does not itself entail an absence of regulation.** [...] The freedom to be healthy may be enhanced by regulation, and this apparently is what Congress thought when it passed PPACA.”⁷⁴³

Rabkin describes the **Constitution as a live instrument**, not just a piece of archaic legislation which serves as a powerful tool against the abuse that government can inflict on its citizenry: “it has force in American political life, apart from what the courts say;⁷⁴⁴ ... the difference matters to American citizens who care about whether they are governed in accordance with the Constitution.” So he concludes: “the prevailing American belief – that **we do still have a Constitution, which still imposes some limits on**

⁷⁴³ Brennan, op. cit., p. 1641.

⁷⁴⁴ Rabkin, op. cit., p. 160.

government- also implies that the Constitution is not reducible to what **five robed jurists** happen to say it is at any one time.”⁷⁴⁵

Interestingly enough, Obama has been frowned upon by conservative constitutionalists for having said the same thing but in a different sense and with a different goal: “He suggested it would be ‘unprecedented’ and ‘extraordinary’ for ‘an unelected group of people’ to find ‘a duly constituted and passed law’ unconstitutional.”⁷⁴⁶ Troy proves the President wrong; he complains: “As though that has not been the core role of the Supreme Court [i.e. to declare laws unconstitutional] since the 1803 case of *Marbury v. Madison*, the most judicial decision in American history, and one that our former constitutional law professor⁷⁴⁷ is aware of.”⁷⁴⁸ In fact, “the influence and prestige of the federal judiciary derive primarily from its exercise of judicial review”⁷⁴⁹

⁷⁴⁵ Ibid., p. 165.

⁷⁴⁶ Troy, *Three Days*, op. cit, p. 26.

⁷⁴⁷ “From 1992 until his election to the U.S. Senate in 2004, Barack Obama served as a professor in the Law School.” *Media Inquiries. Statement Regarding Barack Obama*, University of Chicago Law School.

www.law.uchicago.edu/media

“It was as a law student that Obama first made history—and national headlines—when he was elected the first black president of the Harvard Law Review in the spring of 1990.”

www.law.harvard.edu/news/obama-at-hls.html

Harvard Law Bulletin, “Obama first made history at HLS”, Harvard Law School, November 2008.

⁷⁴⁸ Ibid.

⁷⁴⁹ “Advisory Opinions and the Influence of the Supreme Court over American Policymaking”, *Harvard Law Review*, 2011, p. 2064.

9.5 The Individual Mandate and Individual Rights

Barnett analyses to what an extent **the mandate** at hand is a duty imposed on the individual and whether this duty is in accordance with the **spirit of the Constitution and tradition**:

“Can a duty to purchase health insurance from a private company possibly be justified as being on a par with these other⁷⁵⁰ traditionally recognized⁷⁵¹ fundamental duties of citizenship? Put another way, does the reason why a mandate is a proper means for carrying into execution the power of Congress to raise and support an army also justify imposing economic mandates on the people that are convenient to its regulation of commerce among the several states?”⁷⁵²

His answer is conclusive and extreme: the mandate goes against the Constitution since **the mandate goes against the sovereignty of the American people**:⁷⁵³

⁷⁵⁰ Barnett analyses the following duties the federal government imposes on the people: “register for the draft and serve if called, sit on a jury, fill out a census, and file a tax return.” Barnett, *Commandeering*, op. cit., p. 631.

⁷⁵¹ They all have “traditionally been considered fundamental duties that each person owes to the government by virtue of American citizenship or residency. Each of these duties can be considered essential to the very existence of the government, not merely convenient to the regulation of commerce.” Barnett, *Commandeering*, op. cit., p. 581.

⁷⁵² Ibid., p. 630.

⁷⁵³ Upholding the mandate truly turns “citizens into subjects.” Brennan *Commandeering*, op. cit., p. 637.

“What separates the United States from other countries is the minimal and fundamental nature of the duties its citizens owe the state. During World War II, the people were not commandeered to work in defence plans or buy war bonds. Even voting is not mandated in the United States. This is why so many Americans instinctively sense that empowering Congress to commandeer the people to engage in economic activities would **fundamentally change the relationship between themselves and their government**. Conversely, those who are not bothered by the individual mandate likely hold a very capacious notion of the duties owed by the citizen to the state –so capacious that they include ‘the supreme and noble duty’ to engage in any activity that Congress deems to be convenient to its regulation of interstate commerce. [...] Commandeering the people as a means of regulating commerce violates popular sovereignty.”⁷⁵⁴

Moreover, the mandate does not follow any pre-established tradition. **Barnett** asserts:

“Ordinary persons are responsible for their failure to act –or omissions- when they have a pre-existing duty to act. **A mandate to act**, therefore, **presupposes the existence of a duty**, such as the duty of a citizen to defend the country. But **with the individual**

⁷⁵⁴ Ibid., p. 631.

mandate there is not traditionally recognized pre-existing duty.⁷⁵⁵ The duty to purchase health insurance is entirely of Congress's creation. Unless they voluntarily choose to engage in activity that is within Congress's power to regulate or prohibit, the American people retain their sovereign power to refrain from entering into contracts with private parties, even when **commandeering** them to do so may be convenient to the regulation of commerce among the several states."⁷⁵⁶

This is made reference to as well in *Cuccinelli*:⁷⁵⁷ *the mandate* "compels an unwilling person to perform an involuntary act, which in turn submits the person to Commerce Clause regulation; [...] **this is therefore beyond Congress's power** (or at least constitutionally suspect)."⁷⁵⁸

Brennan counters this reasoning thus: "There was indeed no legal duty prior to the passage of the mandate, but are duty and obligation exhausted by positive law? Yes, if we begin with Barnett's splendidly simple presumption of liberty and assign a purely or largely negative role for the state. But we need not begin with that presumption. [...] As times change, the positive obligations of government and the correlative positive rights of the governed can change too."⁷⁵⁹

⁷⁵⁵ Brennan, op. cit., p. 159.

⁷⁵⁶ Ibid., p. 634.

⁷⁵⁷ See chapter 7.

⁷⁵⁸ Brennan, op. cit. p. 634.

⁷⁵⁹ Ibid.

Those opposing the individual mandate normally do so for fear of having to foot the bill for the uninsured: “for some, implementing an individual mandate would be tantamount to asking Americans to act collectively so that everyone –rich, poor, sick, or health- can access medical care when in need, regardless of income or health status.”⁷⁶⁰ This, they argue has never happened in America,⁷⁶¹ the land of self-reliant men, of rugged individualists: they analyse America’s traditional **rugged individualism** as a reason why universal coverage and the existence of a national health care system seem to clash with America’s constitutionalism (another aspect of its exceptionalism): “We need to see individualism not as a dimension of individual character but rather as a moral standard by which social institutions and practices are judged.”⁷⁶³ Rabkin quotes a Pew Global Attitudes Project to prove that **individualism is a mark of distinctiveness of the American political culture**: one of the questions in the survey is on success in life and he highlights the fact that “the United States is one of the only two Western countries where an overwhelming majority insists that individual success in life mostly depends on the personal effort of the individual...”⁷⁶⁴

Challenges against the individual mandate quote individual liberties to sustain that it is utterly unconstitutional: “the desire to protect individual

⁷⁶⁰ Hoffman, *Water and Oil*, op. cit., p. 12.

⁷⁶¹ It has happened but such collectivism was never in the hands of government but of organized civil society: “This notion of health solidarity has deep roots in health care provision historically in the U.S., through mutual aid societies and religious organizations, and is a central attribute of health care in all other advanced nations.” Ibid.

⁷⁶³ Ladd, op. cit., p. 5.

⁷⁶⁴ Rabkin, op. cit., p. 154.

rights is what motivates challenges against the insurance mandate.”⁷⁶⁵ As the Eastern District Court of Virginia expressed: “At its core, this dispute is [...] about **an individual’s right to choose**”⁷⁶⁶ **to be uninsured**. But as the Florida court⁷⁶⁷ held, “there is no constitutional basis for an individually-protected liberty interest to avoid buying health insurance.”

The claim that the Commerce Clause has been overstretched to take in the individual mandate is legally sustained by using individual liberty as the right that suffers in the bargain: “There is a history of efforts to show that congressional legislation enacted pursuant to the Commerce Clause violates some implicit –and typically poorly articulated- liberty right.”⁷⁶⁸

Another limitation of this power of Congress under the Commerce Clause is **personal liberty**: the individual mandate is unconstitutional under a larger principle that the Commerce Clause Congress may not regulate “inactivity” since that would interfere with personal liberty. The court ruled that Congress can regulate *existing* interstate commercial activity, but it can’t directly force people to enter into a market. “The power to regulate commerce,” Roberts wrote, “presupposes the existence of commercial activity to be regulated.”⁷⁶⁹

According to Thorup, an unfavourable judgment by the Supreme Court on the PPACA would render individual rights Congress’s favourite

⁷⁶⁵ Hall, op. cit., p. 1838.

⁷⁶⁶ Virginia ex rel. *Cuccinelli v. Sebelius*, 728 F. Supp. 2d 768, 788 (E. D. Va. 2010).

⁷⁶⁷ Florida ex rel. *McCollum v. Department of Health & Human Services*, 716 F. Supp. 2d, 1120, 1146 (N. D. Fla. 2010).

⁷⁶⁸ Baker, op. cit., p. 296.

⁷⁶⁹ *National Federation of Independent Business v. Sebelius*, June 28, 2012.

toy: “if the Supreme Court chooses not to invalidate the individual mandate, the consequences of such a decision can have dramatic effects on constitutional protections: [...] unlimited congressional power over citizens’ purchases and actions. **Nothing would be able to stop Congress from mandating limitless agendas.** The government could force us to purchase new cars, or penalize us for not eating five different fruits or vegetables. [...] It does not really matter what the scenario is. What matters is the power Congress will have to ‘control the people’.”⁷⁷⁰

It would also have consequences on the interpretation of the Constitution: “If the Supreme Court upholds the individual mandate, it would eviscerate the Constitution as a document that limits powers; primarily, because Congress would force individuals to perform any act without constitutional redress.”⁷⁷¹ Some will actually quote the Constitution to claim that: “the individual mandate violates an individual’s rights under the **First and Fifth Amendments.**”⁷⁷²

Other scholars **link individualism to distrust of government:** “Americans think they can succeed through their own efforts –and they think

⁷⁷⁰ Ibid., p. 976.

⁷⁷¹ Ibid.

⁷⁷² 1st amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

5th amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

the country that assures them the freedom to succeed on their own is a fine country. People in other countries, who place more reliance on state bureaucracies to care for them, are usually disappointed with the results. Then they are more likely to think their government or their whole society is to blame; [...] add it up and you might infer that Americans want a health care system that helps them make their own choices... **the new health care law constrains the choices of individuals.**⁷⁷³

This of course is clearly challenged in the **speeches where patients tell their personal health stories openly** and how the PPACA has helped them already since the law was passed, even before the judgment by the Supreme Court and even before it comes fully into force in 2014.⁷⁷⁴

9.6 The Individual Mandate and Distrust of Government

At the crux of the argument used to challenge the individual mandate lays the **degree of intrusion by the government** on the individual; how big a role should government play on a person's life. Negative views on the role of government are also responsible for the staunch reluctance to accept the **individual mandate**. In other words, the individual mandate has sparked so much controversy because it clashes with the general views on the **role of government**.

⁷⁷³ Rabkin, op. cit., p. 154.

⁷⁷⁴ See chapter 7.

Conservatives argue that the PPACA's individual mandate is an unprecedented and **appalling intrusion by the federal government on the individual and on individual liberty**⁷⁷⁵ which goes against a deeply ingrained belief among the American people – that of **individualism**, since the PPACA allows government to regulate an individual's **commercial inactivity**, i.e. their wish not to purchase insurance; it penalizes individuals for failing to act:

“The US system of free enterprise has created the best health care system in the world by encouraging creativity and innovation in medical and surgical diagnosis and procedures, and entrepreneurship in health care delivery, and pharmaceutical innovation. The takeover of the health care system by the federal government is just another example of **loss of liberty and freedom** and an attempt to create more dependence of individuals on the government. Requiring individuals to purchase health insurance, particularly from private companies is unconstitutional and a dangerous precedent. Furthermore it is unrealistic to believe that millions of people can be added to the health care system virtually overnight without allocating any resources to accommodate them in the system.”⁷⁷⁶

⁷⁷⁵ The Attorney General of Virginia holds that this legal challenge to the Act “is not just about buying insurance. It is about the limits of the power of the federal government and its relationship to citizens.” Smith, op. cit., p. 1724.

⁷⁷⁶ Parmet, op. cit., p. 401.

Barnett foresees a bleak future for the free exercise of rights:

“the individual mandate is not merely another regulation among countless ones imposed on the American people by the federal government. It crosses an important line between **limited and unlimited government power**. If a power to impose an economic mandate because it is ‘convenient’ to the regulation of commerce is upheld here, then Congress could mandate any behaviour so long as it is cast as part of a broad regulatory scheme. Today it is buying government approved health insurance. Tomorrow it could be having an annual physical or mandating what you eat. What sounds farfetched now can change with the political winds.”⁷⁷⁷

In this sense some conservatives like Judge Vinson or Chief Justice John Roberts make the argument that if government can force us to buy health insurance “it can force us to buy **broccoli**.”⁷⁷⁸ Justice Ruth Bader Ginsburg countered that unlike broccoli, refusing to buy health insurance comes “at the expense of another consumer forced to pay an inflated price,” thus referring to free riders.

⁷⁷⁷ This is Brennan’s and Esckridge & Ferejohn’s contention in order to provide a logical back-up for the existence of what they call “superstatutes.” Ibid., p. 581.

⁷⁷⁸ *Florida ex rel. Bondi v. U.S. Department of Health & Human Services*, No. 10-0091, 2011 WL 285683, at *35 (N.D. Fla. Jan 31, 2011).

Bernard Goldberg, *Eat Your Fruits and Vegetables – Or Else!* June 30, 2010. <http://www.bernardgoldberg.com/eat-your-fruits-and-vegetables-or-else/>

House Budget Committee Paul Ryan's summarizes the conservative view: "Under ObamaCare, power is shifted from patients, doctors, businesses and states to **dependency on the federal government**. That will erode the doctor-patient relationship, lead to waiting lists for treatment and foster widespread dependency on government-run health care..."⁷⁷⁹

9.7 The Role of Government in the Speeches

The PPACA was passed after months of arduous bargaining:

"Joyful as the celebration was at the signing of the Affordable Care Act, there was also an undertone of exhaustion in the room. [...] Bitter partisan opposition erupted repeatedly from spring 2009 to spring 2010, at each of the many steps it took to get health reform bills through three House committees plus the full House of Representatives, as well as through two Senate committees and the full Senate. Partisanship meant that a process always sure to be tricky ended up taking months more than originally envisaged by the President and the media."⁷⁸⁰

Political struggles not only delay the legislative process.

Partisanship feeds America's distrust of government:

⁷⁷⁹ Long, op. cit., p. 93.

⁷⁸⁰ Lawrence and Skocpol, op. cit., p. 6.

“But what we've also seen in these last months is the same partisan spectacle that only hardens **the disdain many Americans have towards their own government**. Instead of honest debate, we've seen scare tactics.⁷⁸¹ Some have dug into **unyielding ideological camps** that offer no hope of compromise. Too many have used this as an opportunity to score short-term political points, even if it robs the country of our opportunity to solve a long-term challenge. And out of this blizzard of charges and counter-charges,⁷⁸² confusion has reigned.”⁷⁸³

He goes on to make reference to the historical precedents of 1935 and 1965 to prove that distrust of government was used at the time as well:

“Now, my health care proposal has also been attacked by some who oppose reform as a **"government takeover"** of the entire health care system. Now, as proof, critics point to a provision in our

⁷⁸¹ He urges Medicare beneficiaries to ignore “scary stories:” “So don't pay attention to those scary stories about how your benefits will be cut -- especially since some of the same folks who are spreading these tall tales have fought against Medicare in the past... and just this year supported a budget that would essentially have turned Medicare into a privatized voucher program. That will not happen on my watch. I will protect Medicare.”

President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

⁷⁸² “The inevitable complexity turned into a bitter and dramatic story full of twists and turns worthy of a Hollywood thriller or a complex detective novel.” Skocpol, op. cit., 6.

⁷⁸³ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

plan that allows the uninsured and small businesses to choose a publicly- sponsored insurance option, administered by the government, just like Medicaid or Medicare. So let me set the record straight here. **In 1935**, when over half of our seniors could not support themselves and millions had seen their savings wiped away, there were those who argued that Social Security would lead to **socialism**. But the men and women of Congress stood fast, and we are all the better for it. **In 1965**, when some argued that Medicare represented a government takeover of health care, members of Congress, Democrats and Republicans, did not back down. They joined together so that all of us could enter our golden years with some basic peace of mind.”⁷⁸⁴

He continues by making a perfect description of how the role of government has been tuned by his predecessors depending on the circumstances; how the current circumstances make a federal action mandatory to guarantee success and how partisanship is getting in the way of common sense:

“Our predecessors understood that **government** could not, and should not, solve every problem. They understood that there are instances when the gains in security from government action are not worth the added constraints on our freedom. But they also understood that **the danger of too much government is matched**

⁷⁸⁴ Ibid.

by the perils of too little; that without the leavening hand of wise policy, markets can crash, monopolies can stifle competition, the vulnerable can be exploited.⁷⁸⁵ And they knew that **when** any government measure, no matter how carefully crafted or beneficial, is subject to scorn; **when any efforts to help people in need are attacked as un-American**; **when** facts and reason are thrown overboard and only timidity passes for wisdom, and we can no longer even engage in a civil conversation with each other over the things that truly matter -- that at that point we don't merely lose our capacity to solve big challenges. We lose something essential about ourselves. That was true then. It remains true today. **I understand** how difficult this health care debate has been. I know that **many in this country are deeply skeptical that government is looking out for them.**"⁷⁸⁶

Finally, he quotes the names of people who are benefiting from the PPACA to prove the position of Republicans unreasonable:

"Right now there's a political debate going on about should we maybe repeal the health care act or -- because **this is part of big government.** And you've heard the Republican leader in the

⁷⁸⁵ Equally paramount is the **distrust of private power**. In *Citizens United v. FED*, 2010, the Supreme Court established that corporations are "legally privileged organizations that [have] to be closely scrutinized by the legislature because their purposes [have] to be made consistent with public welfare." Thus, Marshall concludes that "the problem with overly limiting the power of government ... is that it leads to another type of social ill, the unchecked dominance of entrenched power elites." Marshall, loc. cit.

⁷⁸⁶ Obama's Health Care Speech to Congress. September 9th, 2009.

House⁷⁸⁷ saying that's going to be one of our priorities -- chipping away at the health care act. Well, first of all, I want to see them come and talk to Gail or talk to Dawn or talk to any of you who now have more security as a consequence of this act, and I want them to look you in the eye and say, sorry, Gail, you can't buy health insurance; or, sorry, little Wes, he's going to be excluded when it comes to an eye operation that he might have to get in the future."⁷⁸⁸

9.8 Conclusion

This chapter studies the concept of individualism as an effective argument used by those opposing the implementation of the PPACA. Those in favour use another key issue, that of collectivism i.e. the need for a collective action coordinated by government. Both arguments belong to the arena of American exceptionalism and are studied by scholars together with the another basic tenet of American exceptionalism, i.e. distrust of government.

This chapter provides an overview of the relationship between the individual and the government vis-à-vis the Constitution and proves that this relationship has always been controversial since the general view is that too much government readily turns into the monster of **big government** which slowly but surely ends up eating up individual rights. It is, in fact, a principle

⁷⁸⁷ John Boehner.

⁷⁸⁸ Obama Holds a Backyard Discussion on Health Care Reform and the Patient's Bill Of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

held in great esteem by Americans that the individual's choice should trump over that of government; i.e. government should have no power to intrude on an individual's life. However, this principle must be adapted when the circumstances prove too daunting for the individual to handle on her/his own; or for each individual State to do the same. It is in this kind of situations where the existence of the government proves an effective tool to veer the grievous situation for a majority of citizens.

10 The PPACA's Patient's Bill of Rights

Essentially, part of the Affordable Care Act that we can implement right now, and will take effect [...] tomorrow is the most important patient's Bill of Rights that we've ever seen in our history.

*Obama holds a backyard discussion on health care reform
and the Patient's Bill of Rights. Falls Church, Virginia.
September 22, 2010.*

Of all the forms of inequality, injustice in healthcare is the most shocking and inhumane.

*Martin Luther King. Second convention of the Medical
Committee for Human Rights. Chicago, 1966.*

10.1 Introduction

The establishment of the entitlement to health care for patients through the enforcement of the individual mandate is an enormous achievement since the right to health for citizens had not been established statutorily or by the jurisprudence till then. Another groundbreaking achievement is the indirect establishment, i.e. through various measures, of the first bill of rights for patients. This chapter analyses what it consists in.

10.2 The Patient's Bill of Rights in the Speeches

Obama makes reference to the creation of a patient's bill of rights: "Starting on September 23rd, **a critical new Patient's Bill of Rights** kicks in that puts an end to some of the worst insurance abuses, and puts the consumers and doctors, **instead of insurance companies**, in control of our health-care system."⁷⁸⁹

This Bill of rights aims at curtailing the abuses by the insurance companies. Throughout his speeches he makes reference to the different forms of abuse used by the latter:

- "The Affordable Care Act puts an end to **the worst insurance-industry abuses**, and gives all Americans, over time, better access to quality, affordable health care."⁷⁹⁰
- "This year, insurance companies will no longer be able to **drop people's coverage** when they get sick. They won't be able to place lifetime limits or restrictive annual limits on the amount of care they can receive."⁷⁹¹
- "The reform bill that passed the Senate this morning, like the House bill, includes the toughest measures ever taken to hold the **insurance industry** accountable. Insurance companies will no

⁷⁸⁹ Obama holds teleconference on the Affordable Care Act. September 21, 2010.

⁷⁹⁰ Ibid.

⁷⁹¹ Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT.

longer be able to deny you coverage on the basis of a preexisting condition. They will no longer be able to drop your coverage when you get sick. No longer will you have to pay unlimited amounts out of your own pocket for the treatments you need. And you'll be able to appeal unfair decisions by insurance companies to an independent party."⁷⁹²

He also provides the **economic background** -basically based on antitrust- to the growing power of insurance companies. Enforcement of antitrust is the only way to tackle this abusive situation by insurance companies:

"My guiding principle is, and always has been, that consumers do better when there's **choice and competition**. That's how the market works. Unfortunately, in 34 states, 75 percent of the insurance market is controlled by five or fewer companies. In Alabama, almost 90 percent is controlled by just one company. And **without competition, the price of insurance goes up and quality goes down**. And it makes it easier for insurance companies to treat their customers badly -- by cherry-picking the healthiest individuals and trying to drop the sickest; by overcharging small businesses who have no leverage; and by jacking up rates. Insurance executives don't do this because they're

⁷⁹² December 24th, 2009.

bad people.⁷⁹³ They do it because it's profitable. As one former insurance executive testified before Congress, **insurance companies are not only encouraged to find reasons to drop the seriously ill, they are rewarded for it.**⁷⁹⁴ All of this is in service of meeting what this former executive called 'Wall Street's relentless profit expectations.' Now, I have no interest in putting insurance companies out of business. They provide a legitimate service and employ a lot of our friends and neighbors. I just want to hold them **accountable**. [...] **Insurance practices** – We will place a limit on how much you can be charged for out-of-pocket expenses, because in the United States of America, **no one should go broke because they get sick.**"⁷⁹⁵

10.3 History

The right to adequate medical care and good health was first mentioned in Franklin Delano Roosevelt's **Second Bill of Rights**. "His project was to recognize [...] affirmative rights as fundamental commitments that a democratic government should be making to its citizens. [...] The primary mechanism for Roosevelt's grand project was **superstatutes**."⁷⁹⁶

⁷⁹³ They're certainly not good, then?

⁷⁹⁴ These same words are said by Michael Moore in *Sicko*.
<http://www.youtube.com/watch?v=ffVJshHn-1w>

⁷⁹⁵ President Obama's Address to a Joint Session of Congress on Health Care. U.S. Capitol. Washington, D.C. September 9, 2009.

⁷⁹⁶ Eskridge and Ferejohn, op. cit., p. 46.

He managed both to pass through Congress and to get the constitutional assent from the Supreme Court, of the Social Security Act of 1935. Thirty years later, Congress passed the Medicare Act.⁷⁹⁷ And it's taken a number of flawed attempts to finally make F.D.R's wish come true in the form of the PPACA.

10.4 The Bill of Rights and the PPACA

Nowhere in the PPACA the terms "Bill of Rights" appear. This follows tradition:

"The human rights paradigm provides a powerful framework for advancing health. Yet efforts to reform the health care system in the United States have largely avoided the language of human rights and have not attempted to grasp the moral mantle or prodigious infrastructure of established human rights norms and systems. The debate surrounding the ACA, as well as the content of the legislation itself, continues this tradition of avoiding rights discourse in federal health legislation in the United States."⁷⁹⁸

In fact, "neither the language of the ACA itself nor the discourse used during the health reform debate embraced human rights discourse or

Superstatutes were mentioned in chapter 5.

⁷⁹⁷ Social Security Amendments of 1965, Pub.L. 89–97, 79 Stat. 286.

⁷⁹⁸ Gable, loc. cit.

employed rights-based approaches.”⁷⁹⁹ This fact is worrisome if we were to blindly believe that “the road to health reform goes right through the acknowledgement that health care is a right.”⁸⁰⁰ Reformed has been managed regardless.

In his September 9, 2009 address to Congress, for instance, President Obama doesn’t invoke health care as a right. Instead, he focuses on straightforward policy goals: increasing stability and security for those who do not have it, and reducing cost in the system. The only statement linking health reform to a larger ethical concern was a reference from a letter written to the President by the late Senator Edward Kennedy, extolling the “fundamental principles of social justice and the character of our country”⁸⁰¹ underlying health reform proposals:

“I received one of those letters a few days ago. It was from our beloved friend and colleague, Ted Kennedy. He had written it back in May, shortly after he was told that his illness was terminal. He asked that it be delivered upon his death.

In it, he spoke about what a happy time his last months were, thanks to the love and support of family and friends, his wife, Vicki, his amazing children, who are all here tonight.

⁷⁹⁹ Ibid.

⁸⁰⁰ Odom, *Obamacare*, op. cit., p. 2011.

⁸⁰¹ President Obama's Address to a Joint Session of Congress on Health Care. *The White House*, Wednesday, September 9, 2009; 7:59 PM.

And he expressed confidence that **this would be the year that health care reform – ‘that great unfinished business of our society,’** he called it -- would finally pass.

He repeated the truth that **health care is decisive for our future prosperity**, but he also reminded me that ‘it concerns more than material things.’

‘What we face,’ he wrote, ‘is above all a moral issue; at stake are not just the details of policy but **fundamental principles of social justice and the character of our country.**’”⁸⁰²

Despite the lack of explicit reference to the right to health, experts agree on the fact that all the measures put together in the PPACA are tantamount to passing a patient’s bill of rights. The PPACA **does not establish the right to health** (or even the right to health insurance) but it does set in motion a number of significant structural and normative changes to United States law that comport with the attainment of the right to health: “most significantly, key provisions of the bill are designed to improve availability, accessibility, acceptability, and quality of conditions necessary for health, and to prompt the government to respect, protect, and fulfil these conditions.”⁸⁰³

Obama provides examples of these important “normative changes”, “key provisions”, measures, “long-overdue reforms that will put our health-care system on a path to sustainability”:

⁸⁰² Ibid.

⁸⁰³ Gable, op. cit., p. 341.

“Let me just tick off some examples.

We're putting an end to **unjustified rescissions**. What that means is -- is that insurers will no longer be able to cancel coverage when you get sick, just because of a mistake on your paperwork. And this will help nearly 11,000 Americans who are dropped from their coverage, often when they need it most.

Second, we'll -- we'll give families peace of mind by allowing most parents to keep children on their coverage, **up to the age of 26**. As -- as many of you know, up to **2.4 million young adults** could gain coverage as a consequence of this. And -- and young people are the people who are most likely to be uninsured, as they're starting off their careers, and sometimes in jobs where they just don't get insurance.

We're going to help 88 million people to get the **preventive care** they need to stay healthy, by requiring many insurers to cover recommended **preventive services**.

Finally, we're going to ban plans from charging individuals more if they go to an **emergency room** that isn't in their network, because people in need of emergency care should not have to worry about driving a few more miles for a cheaper co-pay.”⁸⁰⁴

These developments mean that, to a degree, the United States has undertaken the same types of legal and policy steps that a developed

⁸⁰⁴ Obama holds teleconference on the Affordable Care Act. September 21, 2010.

country would be required to take to uphold the right to health. The legislation does satisfy some of the core components of the right to health as developed in **international human rights law**, General Comment 14,⁸⁰⁵ and related interpretive documents. In particular, aspects of the ACA comport with the requirement of governments to respect, protect, and fulfil the right to health; to take steps to provide conditions of adequate availability, accessibility, acceptability, and quality for health; and to satisfy the underlying determinants of health.

But, again, **nowhere the Law actually recognizes the right to health in any formal or legally binding way.** To this day there is no formal recognition of the right to health in the American legislation.

This fact enables bigots to assert the following: “Health care is not right. The **Declaration of Independence of the United States of America** enumerates the rights to ‘life, liberty, and the pursuit of happiness’. Nowhere is health care mentioned. Just because health care exists is not a reason that it should be available to all and that the costs should be subsidised by the government.”⁸⁰⁶ This fact and certainly the attitude that comes with it have been interpreted as a dark, negative side of American exceptionalism.⁸⁰⁷

Fortunately, other scholars have a different view of health care: “Access to health care is a **fundamental human right** and should be

⁸⁰⁵ General Comment 14 by the Economic and Social Council of the United Nations, 25 April-12 May 2000: www.unhchr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En

⁸⁰⁶ Pariser, loc. cit.

⁸⁰⁷ Krugman, loc. cit.

equally available to everyone. It is society's ethical obligation to provide health care for all.”⁸⁰⁸

10.5 Assuaging Conclusion: Promising Future for Health Care

There is nonetheless future in the fact that terms like “bill of rights” and “entitlement to health” have entered the discourse pertaining health issues. The PPACA has provided the necessary ‘push’ for this to happen: “The ACA changes the social contract, establishing a new norm of **universal health insurance** with a subtext that everyone deserves access to basic health care, even if not recognized as a constitutional or human right. This is good for public health and also may be an **opening for a more direct discussion about the right to health in the United States in the future.**”⁸⁰⁹

Odom is even more optimistic: “If the Act is found to be consistent with the US Constitution [which it has been], the great debate regarding whether health care is a right or privilege in the US will finally be resolved.”⁸¹⁰

Obama is optimistic as well in the following insightful reflection on the future: “But today, I’m as confident as ever that when we look back five years from now, or 10 years from now, or 20 years from now, we’ll be better

⁸⁰⁸ Gable, loc. cit.

⁸⁰⁹ Ibid.

⁸¹⁰ Op. cit. Odom, *Obamacare*, 2012.

off because we had the courage to pass this Law and keep moving forward.”⁸¹¹

⁸¹¹ Remarks by the President on Supreme Court Ruling on the Affordable Care Act. East Room. June 28th, 2012. 12:15 P.M. EDT.

Conclusion

The PPACA introduces ground-breaking reforming measures in the healthcare system of the United States. Perhaps the most important single contribution made by this thesis is that it shows, through the speeches, that these measures, especially the individual mandate, do not clash with American values. **The PPACA** is in perfect accordance with these deeply ingrained values and cultural beliefs which include the moral imperative to address a situation affecting 46 million uninsured Americans (8.1 million children);⁸¹² in fact, it was passed, among other reasons, to embrace them – coverage is set to be universal.

My contention is that Obama is fully aware of the existence of these values, i.e. of the existence of a **purely American ideology** and this work proves that he uses this knowledge in his **speeches** to bring his reform through. He includes elements of American exceptionalism in his speeches as an efficient rhetorical tool to shift public opinion and to explain key issues of the PPACA. This work makes constant *ad-hoc* reference to speeches to prove this. The President reminds his audience that the PPACA is following tradition and by doing so he is ultimately proving that the American people can be mobilized in the spirit of the Founders. After all, the success of the law to a greater extent and, given the constant reference to American exceptionalism in the speeches, became contingent on proving

⁸¹² See chapter 2.

that the PPACA followed (or rather did not go against) both a legal tradition (established by the Supreme Court) and a cultural tradition that is consistent with purely American values.

The fact that Obama uses American exceptionalism in his speeches is an excellent proof that the PPACA is an exceptional statute that endorses several controversial key issues.

The references in the Law and in the speeches to American exceptionalism prove that **American exceptionalism is an effective policy-making tool**; especially in policies as convoluted as health care.⁸¹³ If the PPACA or the speeches had not made reference to American exceptionalism, the chances of the PPACA passing the constitutional filter, and receiving the acceptance and gradual endorsement by the American people, would have been greatly diminished. These are, of course, mere speculations. But the fact that American exceptionalism is used by the POTUS and by those opposing the law, is in itself good evidence of its effectiveness. An obvious subject for further study would be to ascertain how relevant American exceptionalism has been in the success or failure of previous health care reforms; e.g. the campaign to destroy Hillary Clinton's plan to reform health care.

The hub of the controversy lies on the **individual mandate**. Its implementation ultimately involves, for the first time in the history of the

⁸¹³ "Most developed countries have a single health care system, with a common philosophy about coverage, access, and costs. The United States does not. Here, the multiple aspects of health care access, delivery, and performance make the job of describing health care in the United States particularly onerous." David Cutler and Patricia Keenan, "Health Care" in Peter H. Schuck and James Q. Wilson (ed.), *Understanding America*, Public Affairs, New York, 2008, p. 449.

United States,⁸¹⁴ the legal recognition of the right to health care. It also entails that health care will be made compulsory for large groups of the population that had to make do without insurance before this law (basically, the uninsured and free lancers). For all these reasons the **passing of the Law by Congress**⁸¹⁵ **was not eased** (to put it mildly) by the opposing party. Ultimately, the constitutionality of the law was questioned and the Supreme Court was asked to rule on it.

The two basic arguments used by either party in the battle on the individual mandate, **individual rights v. role of government** are typically studied by experts on American exceptionalism -historians, political scientists and lawyers- since they both lie at the core of American values. This work proves how relevant these arguments have been in discussions about the individual mandate. They both **date back in history** – individualism, to the time of the formation of the frontier; distrust of government, to the time of the revolution for independence. Obama is aware of the implications of either argument and so he looks back in history and proves that back in 1935 and 1965 those against Social Security and Medicare used the same reasoning.

Contenders of each side use arguments pertaining to American exceptionalism. **Those in favour of the PPACA** claim that the fact that America does not have universal coverage is “an unacceptable case of

⁸¹⁴ See chapter 10.

⁸¹⁵ “Bitter partisan opposition erupted repeatedly from spring 2009 to spring 2010, at each of the many steps it took to get health reform bills through three House committees plus the full House of Representatives, as well as through two Senate committees and the full Senate.” Lawrence and Skocpol, op. cit., 6.

American exceptionalism.”⁸¹⁶ The United States lacks a medical-care financing system to make medical care accessible to the population generally. The mandate is **an expression of a much needed collective action** when so many millions are suffering from lack of health care.

Those opposing the PPACA also use arguments sustained by American exceptionalism in order to characterise the law an anti-American tool of destruction, a harmful instrument which will eventually destroy the American people, spirit and whatnot.⁸¹⁷ The mandate harms **the sovereignty of the American people**, since every individual is entitled to decide whether or not to purchase insurance. The law is oblivious to **American individualism**, i.e. the law is unconstitutional because it includes a mandate that forces individuals to go against their right to remain uninsured, when not having universal coverage is inextricably linked to the American creed. The PPACA’s enforcement of **universal coverage** will not prosper since not having it and having the liberty to decide whether or not to get insurance is part of American exceptionalism. Moreover, it negatively affects the relationship between the people and the government, since it compels citizens to purchase insurance and is enforced by the government when **disdain of government** as much as individualism is a core value of

⁸¹⁶ Paul Krugman, “Afflicting the Afflicted”, *The New York Times*, February 25, 2010.

⁸¹⁷ “In the 2010 and 2012 elections, the U. S. Chamber of Commerce ran ads saying that health reform is ‘crushing small businesses with billions in penalties’ and ‘will kill jobs across America.’ After the high court upheld the law, Republican Governor Rick Scott of Florida told Fox News it was ‘the biggest job killer ever’.” John Tozzi, “Getting a Grip on Obamacare”, *Bloomberg Businessweek*, April 8-14, 2003, p. 27.

“The U.S. Chamber of Commerce facilitated the ad buys. [It] also poured \$144 million into lobbying, outspending all other organizations and businesses during 2009.” Mettler, op. cit., 99.

American creed. In effect, the individual mandate established by PPACA could set a dangerous precedent.

The problem is that **some**⁸¹⁸ **do not have the option to decide** – some patients do not have the resources to get insurance – they are rejected by insurance companies on the grounds of a **pre-existing condition**; or they have done things right⁸¹⁹ but at the last minute and when the policy-holder becomes sick the insurance company will tell them that they cannot become a patient for a **formal reason**. This situation (“the amount of vulnerability out there was horrendous”)⁸²⁰ has been tackled by collective action despite America’s staunch belief in the power of individualism.⁸²¹ Moreover, the PPACA is construed as a threat to this value since it expands the role of government by compelling the purchase of insurance, by creating the exchanges, by expanding Medicare coverage.

The PPACA also adopts measures typical of **preventive care**. This is another reason for praising the law: it would be enlightening to observe and study in the future how many lives are saved thanks to the implementation of these measures. Preventive medicine is yet another matter for study: to explore the main tenets and historical origin of this different conceptualization of medicine.

⁸¹⁸ Some being thirty -two million Americans. Data from Lawrence and Skocpol, op. cit., p. 4.

⁸¹⁹ This is the case of Natoma Canfield. Obama makes reference to her case several times and this work documents it (Chapter 7).

⁸²⁰ Obama Holds a Backyard Discussion on Health Care Reform and the Patient’s Bill of Rights. Falls Church, Va. September 22, 2010. 11:59 A.M. EDT.

⁸²¹ See chapter 9.

Each chapter answers the questions posed by the previous one and poses questions answered in the next. Each chapter combines both theoretical content and content based on facts. Every chapter serves as well as theoretical backup to prove what is described on those chapters which focus on the reality provided by facts.

Chapter 1 provides the prime theoretical content of the whole thesis; it explores the origin of the term American exceptionalism, how it has been used throughout history and the content of the term – its main tenets. From a methodological point of view, it also serves to identify the aspects that will be taken into account when analysing the speeches.

Chapters 2 to 5 serve as background information for the rest of the chapters. Chapter 2 describes the deleterious situation of health care in the United States; given this situation, there are two different positions that chapter 3 describes, basically to reform or not to reform; it also explains why the latter position has almost always won. Chapter 4 explores the ideological background used in the past to thwart attempts to reform and it also analyses the ideological background used in the speeches to push it forward. Chapter 5 describes the entity in charge of reforming, i.e. the government; and the many reasons it has always found so many impediments to carry it out.

Chapters 6 to 10 explore the reform carried out by the PPACA. Chapter 6 serves as introductory chapter; it studies the individual mandate from the point of view of the American exceptionalism. Chapter 7 describes the tool envisaged by the law to cope with the situation described in the following chapter, i.e. the individual mandate which has been established to

put an end to the situation of the uninsured and free riders described in chapter 8. Expansion of Medicaid coverage will also improve the current situation. Both mechanisms were contested before the Supreme Court.

Chapters 9 and 10 deal with the individual rights. The root of these rights, individualism and distrust of government, constitute the core of the American creed and constitute the theoretical framework of discussions on the constitutionality of the PPACA. Chapter 10 describes a groundbreaking achievement by the PPACA: the establishment of a bill of rights for patients.

From a **methodological point of view** the main contribution of this work is the use of speeches to prove the existence of an American creed and to prove that such creed is present in a statute; it is certainly present in its foreseeable consequences. There is abundant and varied literature which studies the **power of rhetoric** in political speeches. This work develops this idea and goes further by focusing on **the content of the speeches** as a reflection of the fact that reform as established by the PPACA is not against American values.

This work shows that American exceptionalism is as old as the nation and proves that the subject is not a thing of the past; it has been used by academia to identify truly American values; and it is being used by academia in relation to Obama. My work follows suit but adds a new element to the study: my work is special in that it **uses speeches** by the incumbent to prove the use of American exceptionalism; and it is specific in that it focuses on speeches on a given policy: health care. The methodology therefore is original in that it uses speeches on a given subject to prove a point.

The **analysis of scholarly articles** on the constitutionality of the PPACA shows that scholars examine the Law to prove or disprove that reform according to the PPACA follows traditional values, i.e. those set by American exceptionalism. Academia uses American exceptionalism as a decisive test to determine the possible outcome of the Supreme Court decision. In this sense, the heated discussions held by the media on the possible outcome of the judgment by Supreme Court and all the rhetoric of campaign debates could be worthy of study with this idea in mind. E.g. how differently did Obama and Romney use American exceptionalism in the rhetoric of the campaign?

A difficulty that this work had to cope with was the fact that the **constitutionality of the PPACA was being revised by the Supreme Court when it was being drafted**. The individual mandate was an issue of contention before this judgment came out. So the bulk of the scholarly articles I have used were published prior to the judgment. Nobody counted then with the assertiveness, the security on the constitutionality of a statute that a judgment provides.

All chapters make reference to the speeches to prove a given point. A clear limitation of this work, however, is the **number of speeches** (189). I have chosen key speeches for the historical moment when they were delivered or simply because of their subject matter. As I said in the introduction to this work, Obama is never short for words and I include an appendix at the end of the same to prove it; the choice is vast - I could have chosen more speeches and at times I make reference to other speeches than the selected ones for reasons that make them relevant to prove a point

in discussion. All in all, this thesis sheds light on the objectives it has tried to attain and the speeches I have chosen fully serve these purposes. Perhaps, an increase in the number of speeches would have hindered the whole process of accomplishing the academic goal of writing a thesis.

A different matter and one that is up for speculation is how useful were Obama's references to American exceptionalism in his speeches on health care in order to convince the American people of the feasibility of his reform. Of course the **effectiveness of his speeches** does not solely depend on the content but also on the efficiency in delivering them. Odom summarizes this point:

"Despite the challenges, as those reflected in the healthcare reform debate, Obama's eloquence, command of the airways, and attention from the public remained unchanged. This ability is considered to be deeply rooted in his underlying talent to continuously convey hope and encouragement to the American people. Accepting a leader's interpretation of a crisis and believing in his or her ability to deal with problems relieves followers of the psychological stress and loss of control created in the aftermath of a crisis. [...] His charisma, and ability to encourage and motivate followers through inspiring speeches. [...] Obama's propensity for communicating high expectations for the American people and exhibiting confidence in their ability to meet such expectations was critical in his being elected as the first African – American president, and subsequently being the first president to

successfully pass universal healthcare legislation. These qualities are consistent with a leader that is [...] seeking to move his constituents towards a higher goal and moral development.”⁸²²

Skolpol summarizes the use of speeches by an “**eloquent president**”: “In this speech,⁸²³ as in earlier and later big addresses on health care, Obama did what an eloquent president can do best: focus public attention on a priority, corral wandering and wavering DC politicians, and signal gritty determination to vulture-like lobbyists circling Washington.”⁸²⁴

This work describes the nitty-gritty, the **practicalities of the legislative process** to pass the PPACA and how these are reflected on the speeches. This is important to understand the extent to which the PPACA is a controversial law and as such, it met numerous legislative impediments until its final approval. Those hurdles were placed by members of the opposing party for reasons linked to concepts of American exceptionalism, basically the increase in costs and the unconstitutional entitlement to health care based on a flawed conception of individualism. A more moderate kind of criticism comes from those that consider that the president could have done more.⁸²⁵ This kind of criticism serves as an excellent route map for the

⁸²² Odom, loc. cit.

⁸²³ She refers to the speech of September 9, 2009.

⁸²⁴ Lawrence and Skocpol, op. cit., p. 54.

⁸²⁵ “But if Obama’s well-time use of the ‘bully pulpit’ was effective, let’s not overestimate what a President can do, either with grand speeches or by issuing ultimatums. Throughout the health reform effort, pundits and commentators

future, i.e. critics provide a list of necessary steps in health for the future. This is after all, an ongoing process. A lot still has to be done. The question is, is the ultimate goal to equate health care procurement with European levels?⁸²⁶

The fact that the mid-term elections⁸²⁷ were lost by the Democrat party made implementation of the PPACA even more difficult: “opponents gained steam.”⁸²⁸ But this meant that the Law was passed with **reinforced legitimacy** since it counted with the acquiescence of the GOP after a long and arduous bipartisan legislative process. This, of course, is the glass half-full view. The law was not passed in “an atmosphere of political calm or good will” and so “even before the ACA takes full effect [in 1 January 2014],

repeatedly criticized Obama for not doing more to force issues and push bold reform.” Lawrence and Skocpol, op. cit. p. 55.

⁸²⁶ “The country in the world that uses the greatest proportion of its resources on health services is the United States. Measured by Nordic welfare standards, however, it is hardly to be considered a welfare state. This most expensive health system in the world is not even able to serve its own population – 40 to 50 million people are not included, because they do not have private health insurance. Obama’s ‘one small step’ in the right direction is still only a pale imitation of the European models.” Wahl, op. cit. p. 41. Is the European model the one to imitate? Is this the ultimate goal, i.e. to imitate Europe?

⁸²⁷ “Usually presidents are rewarded on Election Day for the enactment of landmark legislation. After the remarkable passage of the Civil Rights of 1964, Lyndon Johnson won a huge victory and gained even larger Democratic majorities in Congress; the same was true of Roosevelt after he signed into law the Social Security Act of 1935 and that was at a time with an unemployment rate double that of 2010: 20 percent, compared to 10 percent. The Affordable Care Act of 2010 compares to both of those in terms of its scope and significance, and yet, Obama did not reap such rewards. [...] By September, 61 percent of Americans told pollsters that they favoured repeal of the health care reform law. In the November election, Republicans took control of the House, gaining 63 seats, the largest gain in a midterm year since 1938. It was, to use Obama’s words, a “shellacking” of the administration and the Democrats.” Mettler, op. cit. P. 104. In the same sense: “Reinforcing the logic of this line of attack, Obama’s approval ratings appeared to move ‘in sync with the relative prominence of the health care debate’ (Saldin, 2010). Depressingly for the administration, the more that health care came to the fore, the further down the president’s numbers went.” Morgan, op. cit., p. 150.

⁸²⁸ Mettler, op. cit., p. 103.

it is profoundly changing politics in voting booths, courts, legislatures, and bureaucracies. How much of the full plan survives intact will depend on future policy decisions and unfolding political battles.”⁸²⁹ The future is uncertain.

The legitimacy of the Law is **further reinforced** by the judgment passed by the Supreme Court of Justice. The numerous challenges and, ultimately, the judicial review before the Supreme Court are the mechanisms envisaged by the system to overrule the PPACA or any public policy for reasons that go beyond the mere wording of the law since they affect values, customs, traditions ingrained in the people. The latter must have a reflection on public policies. If the PPACA had not reflected the former then it would have been declared null and void.

This work also explores the **economic reasons for reform**. It proves that Americans spend a lot more than they actually get in exchange in terms of health care, i.e. the system does not pay off. There is a genuine reason to reform given the rotten economics of the current system. Obama includes statistics in this sense as well: with such data it seems like the right thing to do to carry out reform. Opponents claim that the reform he proposes entails an unsustainable increase in costs. Those in favour of PPACA assert that maintaining the current situation will increase costs anyway and that the reform envisaged by PPACA will not increase the current deficit. When the PPACA was being debated by the media and during the campaign debates of either term, health care costs were a constant argument used by either party to claim that health care reform was

⁸²⁹ Lawrence and Skocpol, op. cit., p. 7.

necessary or not, or that the law established the correct way to reform or not. The consequences of the implementation of the individual mandate and the Medicaid expansion plans would seem to have a further negative effect on the increase in costs. This is countered again and again by Obama who insists that one of the goals of the PPACA is precisely to reduce the costs; if measures to reform are not implemented, the costs will be increased exponentially. In any case, the figures are facts and from them it was then (when the need to reform was discussed by Congress) concluded that if nothing was done the system would eventually go bust.

Reform is important from an economic point of view; but not only for that because there is a **moral issue** at stake. This work shows how this moral perspective has been vigorously opposed using concepts such as socialism (and the correlative socialized medicine) or the less far-fetched individualism: reform for the common good might be ideal but because it is put into practice through the mischievous hands of the government, the individual's freedom of choice should prevail.

Obama uses this moral imperative in his speeches to convince the people that reform is a need imposed by ethics and that such reform undertaken by government is not against tradition. He also manages to quickly change the course of this moral imperative, depending on the type of shortcoming, on the political situation: he added an element of utilitarianism to his original approach and then used **craft ethics**. Though

some have looked down on this ‘manoeuvring’,⁸³⁰ ultimately it proves he is the perfect strategist, a real deal-maker.

When the PPACA was being debated, both parties agreed on the fact that the debate on the constitutionality of the PPACA boiled down to the **role of government** on the life of Americans. This work develops this idea by comparing the United States to other OECD members. The results are conclusive: public social procurement is low in the United States but the role of government in regulating the economy has improved, notwithstanding the **inexistence of a public health care system**. Exploring the reasons for this fact enables the study of further elements of American exceptionalism: not only the lack of public health care procurement, but also the inexistence of a right to health; the minor role played by trade unions in the fight for a public system or the parallel inexistence of a lobby to defend the interests of the working people in the area of health care; the effect that federalism or its expression on the territorial structure of the state have had in delaying and hindering plans to implement a public health care system; how closely intertwined the creation of a public system of health care and racism are; how different the interests of the different stakeholders are and how difficult it must have been to reach a compromise given the latter. All these factors must be taken into account to understand this peculiarity, this element of American exceptionalism.

⁸³⁰ Biden of course claims the opposite, i.e. Obama has always been true to his values: “History is made when a leader steps up, stays true to his values, and charts a fundamentally different course for the country.” Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. Washington, D.C. March 23rd, 2010. 11:29 A.M. EDT

The **distrust of government** is rooted in historical reasons and is expressed in the separation of powers established in the Constitution. This disdain is also present in the current fight against the law that would enforce check-ups on those wanting to purchase weapons. The gun lobby has a doppelgänger: the civil – libertarian lobby who quotes the 2nd amendment⁸³¹ to sabotage the passing of the bill “favored by the overwhelming majority of Americans” to enforce controls prior to the purchase of small arms.⁸³² Klein describes the strategy: “The oil barons and financial wizards and labor unions all use the same maximalist tactics on their targeted politicians: If you oppose us, even a little bit, we’ll slide the slippery slope toward socialism (or whatever) – and you will pay come election time.”⁸³³

It is a truly exceptional fact that the United States government plays such small role in public health care procurement compared to its counterparts. Obama’s predecessors have attempted several times to reverse this situation, this oddity which explains other American exceptional issues. So it follows that those administrations that have managed to carry out reform with the goal of implementing measures of a public nature proved truly **efficient and strategic**. They coped with such adversity by passing **superstatutes**; the PPACA is a good example of one.

Reform has been attempted several times before. This work explores the historical background of the multiple attempts to reform, a situation that has been worsening with each passing year since the time of

⁸³¹ A well regulated Militia, being necessary to the security of a free State, the right the people to keep and bear Arms, shall not be infringed.

⁸³² Joe Klein, “An Angry Obama. Finally”, *Time*, May 13, 2013, p. 25.

⁸³³ Ibid.

Teddy Roosevelt when he hailed the importance of providing health care to the Americans, “for no country could be strong, whose people were sick and poor.” The existence of numerous flawed attempts increases the **relevance of the achievement** that is to be able to talk about the PPACA as an enforceable piece of legislation. No wonder it has been hailed as being as important as the passing of two other public programmes: Medicare and Medicaid.⁸³⁴ Moreover, past flawed attempts show a common note: of all the stakeholders having a say in health care, insurance companies could be held directly accountable for the situation of this economic sector in the United States. Another conclusion based on past experience is that **recession influences policy-making** and forces measures of a specific type. Because the PPACA has been passed in the midst of one of the worst recessions in history, it seems that American exceptionalism’s typical **distrust of government imposes painful economic circumstances** to put aside this type of disdain and actually expect from government to implement typical welfare measures such as the PPACA. In effect, the New Deal was implemented to tackle the effects of the Great Depression.

At the core of this development lies a **difficult tour-de-force between the federation and the states**. The clauses enable the federation, through Congress, to legislate in areas that involve more than one state, for example, the trade relations between states a.k.a. inter-state commerce; and the federation can regulate inasmuch as it is necessary and proper according to the clause of the same name. The clauses then legitimize Congress to regulate health care. One of the main arguments

⁸³⁴ By Secretary Kathleen Sebelius.

used by the states that challenged the PPACA was that health insurance, or rather the choice not to purchase health insurance, cannot be considered a **commercial activity**. But the Supreme Court based its judgment on **the taxing power of Congress**, thus overruling the Court of Appeal's decision. Interestingly enough, neither party reckoned that "the penalty" established by the PPACA for those who decide to forego purchasing health care has the nature of a tax. This work thus deepens into the practicalities of the relationship between the federation and the states from the point of view of health care.

It is hoped that the most controversial aspect of the PPACA, the **individual mandate**, which aims at attaining universal coverage, will survive. The fact that the words 'individual mandate' are not mentioned in the speeches and the more likeable words "**personal responsibility**" are used instead are good enough proof of how much controversy this issue sparks. The individual mandate was passed by Congress making use of two paramount constitutional clauses: **the "commercial" clause** and **the "necessary and proper" clause**. These clauses have been developed by the Supreme Court. The scope of these clauses was also debated during FDR's tenure when he managed to pass the law that established social security in 1935; more than half a century later Obama manages to pass the law that established universal coverage using the same legal basis.

Another subject for further research would be precisely the study of **other mandates in the area of health care**. As a matter of fact, individual

mandates are common in issues pertaining to health care.⁸³⁵ The rationale behind public health mandates is easy to define since they target the general good.⁸³⁶ Gostin⁸³⁷ studies the legal precedents and analyses cases such as *Jacobson v. Massachusetts*.⁸³⁸ At the core of historical precedents and even the law itself (not just the PPACA but other laws such as the one mandating vaccination) there is an **ethical argument at stake: for instance, whether public health should trump individual liberty**. It would be interesting to see the role these two poles have played in every historical precedent.

This work also describes how the individual mandate will be put into practice and whom it will affect. Obama makes detailed references to **the exchanges or markets of health insurance**: he refers to their source of finance, to their optional nature, to how their existence will not affect those benefitting from other public programmes. These markets are aimed at putting an end to the abuses regularly inflicted by insurance companies and to deal with the situation of those who freely decide not to buy

⁸³⁵ “For example, vaccine laws are frequently described as mandates because they require (or at least appear to compel) people to be vaccinated. Likewise motorcycle helmet laws and seat belt laws are sometimes described as mandates, again because they require individuals to engage in an activity they would otherwise choose to forego. [...] Like PPACA’s mandate, they regulate people simply because they ‘exist’.” Parmet, op. cit. p. 404.

⁸³⁶ In the case of insurance the general good is clear: “When you live in a community with people who are uninsured, you are being affected through the inadequacy of the public health system, the diversion of resources. You’re being compromised because of the effects on the hospitals and physicians in your community. All of us are in the boat together.” Reed Tuckson in *Baker*, loc. cit.

⁸³⁷ L. O., Gostin, “The National Individual Health Insurance Mandate,” *Hastings Center Report* 40, no. 5, Sept. / Oct. 2010, pp. 8-9.

⁸³⁸ In this important case, the Supreme Court upheld the law that mandated vaccination on individuals during a smallpox epidemic. Justice Harlan famously stated: “here are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members.” 197 U.S. 11 (1905).

insurance (free riders). Both Obama and those opposing this aspect of reform use elements of American exceptionalism: the President mentions equality as a goal pursued by the introduction of exchanges; the mere existence of free riders is good proof that equality is not a reality. Those against reform consider that the exchanges or markets of a public nature (a contradiction, in itself, some would claim) are, in effect, an unacceptable enlargement of the scope of regulation by government since the individual mandate compels free riders to purchase insurance, or else pay a tax (according to the Supreme Court) / a penalty (according to the law). This fact clashes with America's high esteem for individualism. But the exchanges aim at reducing the number of uninsured which will, in turn, solve the costly problem of adverse selection by enlarging the pool of insured and preventing the formation of what actuaries refer to as death spiral. It can easily be foretold that once the individual mandate is enforced for a substantial period of time, scholars will then study the effect of the mandate in terms of its effects on adverse selection. This is indeed, another matter for further study.

The **bill of rights** serves a nice denouement of the whole thesis – for the first time a statute makes indirect reference to a number of rights which together are tantamount to a bill of rights on health care. The Constitution establishes the right to happiness and it could be construed that the right to health could be included in the latter: getting bad news from a doctor is not a source of happiness; so is getting bad news from the insurer. How much more miserable a sick person must feel to know that they cannot “become” a hospital patient for purely material financial

reasons. This is what the PPACA tries to put an end to through the individual mandate, through expansion of Medicaid.

In conclusion, this thesis provides an analysis of speeches on health care by Obama which proves that the President uses American exceptionalism to prove, in turn, that the PPACA is not against the values, traditions and ideas clustered around the concept of American exceptionalism.

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B.1 Primary Sources

B.1.1 Speeches

Appendix I contains the selected speeches I have used in this work.

Appendix II is a list of Obama's speeches by content.

B.1.2 Legislation

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Article I, 8, clause 18

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1st Amendment

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Appendix III includes an index to the PPACA and the HCERA.

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Appendices

Appendix I – Selected Speeches

- March 9, 2009 – Washington, D.C. Obama Addresses Decision to Lift Embryonic Stem Cell Limits. East Room – White House.
- June 15, 2009 – Washington, D.C. Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as Released by the White House.
- June 22, 2009 - Washington, D.C. Obama Addresses Seniors and Prescription Drugs. Location: Diplomatic Reception Room – White House.
- September 9, 2009 – Washington, D.C. – President Obama's Address to A Joint Session of Congress on Health Care. U.S. Capitol.
- December 24, 2009 – Washinton, D.C. Remarks by the President on Senate Passage of Health Insurance Reform. State Dining Room. 8:47 A.M. EST.
- March 21, 2010 - Washington, D.C. – Obama Makes Remarks After House Passes Health-Care Legislation. East Room. White House.
- March 23rd, 2010 – Washington, D.C. Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill. East Room. 11:29 A.M. EDT.
- September 21st, 2010. Obama Holds Teleconference on the Affordable Care Act.
- September 22, 2010 – Falls Church, Va. Obama Holds A Backyard Discussion On Health Care Reform And The Patient's Bill Of Rights. 11:59 A.M. EDT.
- June 28th, 2012. Remarks By The President On Supreme Court Ruling On The Affordable Care Act. East Room – 12:15 P.M. EDT.

MARCH 9, 2009 – WASHINGTON, D.C. OBAMA ADDRESSES DECISION TO LIFT EMBRYONIC STEM CELL LIMITS. EAST ROOM – WHITE HOUSE.	
Family values. America the leading scientist.	PRESIDENT OBAMA: Today, with the Executive Order I am about to sign, we will bring the change that so many scientists and researchers; doctors and innovators; patients and loved ones have hoped for, and fought for, these past eight years: we will lift the ban on federal funding for promising embryonic stem cell research. We will vigorously support scientists who pursue this research. And we will aim for America to lead the world in the discoveries it one day may yield.
Diseases	At this moment, the full promise of stem cell research remains unknown, and it should not be overstated. But scientists believe these tiny cells may have the potential to help us understand, and possibly cure, some of our most devastating diseases and conditions . To regenerate a severed spinal cord and lift someone from a wheelchair. To spur insulin production and spare a child from a lifetime of needles. To treat Parkinson's, cancer, heart disease and others that affect millions of Americans and the people who love them.
Government does play a role.	But that potential will not reveal itself on its own. Medical miracles do not happen simply by accident. They result from painstaking and costly research -- from years of lonely trial and error, much of which never bears fruit -- and from a government willing to support that work . From life-saving vaccines, to pioneering cancer treatments, to the sequencing of the human genome -- that is the story of scientific progress in America . When government fails to make these investments, opportunities are missed. Promising avenues go unexplored. Some of our best scientists leave for other countries that will sponsor their work. And those countries may surge ahead of ours in the advances that transform our lives.
Government	But in recent years, when it comes to stem cell research,

+ science + moral values	rather than furthering discovery, our government has forced what I believe is a false choice between sound science and moral values. In this case, I believe the two are not inconsistent. As a person of faith, I believe we are called to care for each other and work to ease human suffering. I believe we have been given the capacity and will to pursue this research -- and the humanity and conscience to do so responsibly.
All Americans united	<p>It is a difficult and delicate balance. Many thoughtful and decent people are conflicted about, or strongly oppose, this research. I understand their concerns, and we must respect their point of view.</p> <p>But after much discussion, debate and reflection, the proper course has become clear. The majority of Americans -- from across the political spectrum, and of all backgrounds and beliefs -- have come to a consensus that we should pursue this research. That the potential it offers is great, and with proper guidelines and strict oversight, the perils can be avoided.</p> <p>That is a conclusion with which I agree. That is why I am signing this Executive Order, and why I hope Congress will act on a bipartisan basis to provide further support for this research. We are joined today by many leaders who have reached across the aisle to champion this cause, and I commend them for that work.</p>
President's capacity	Ultimately, I cannot guarantee that we will find the treatments and cures we seek. No President can promise that. But I can promise that we will seek them -- actively, responsibly, and with the urgency required to make up for lost ground. Not just by opening up this new frontier of research today, but by supporting promising research of all kinds, including groundbreaking work to convert ordinary human cells into ones that resemble embryonic stem cells.
America, scientific	I can also promise that we will never undertake this research lightly. We will support it only when it is both scientifically worthy

leader	and responsibly conducted. We will develop strict guidelines, which we will rigorously enforce, because we cannot ever tolerate misuse or abuse. And we will ensure that our government never opens the door to the use of cloning for human reproduction. It is dangerous, profoundly wrong, and has no place in our society, or any society.
America, the scientist. Science free of ideology.	This Order is an important step in advancing the cause of science in America. But let's be clear: promoting science isn't just about providing resources -- it is also about protecting free and open inquiry. It is about letting scientists like those here today do their jobs, free from manipulation or coercion, and listening to what they tell us, even when it's inconvenient -- especially when it's inconvenient. It is about ensuring that scientific data is never distorted or concealed to serve a political agenda -- and that we make scientific decisions based on facts, not ideology. By doing this, we will ensure America's continued global leadership in scientific discoveries and technological breakthroughs. That is essential not only for our economic prosperity, but for the progress of all humanity.
Science free from ideology	That is why today, I am also signing a Presidential Memorandum directing the head of the White House Office of Science and Technology Policy to develop a strategy for restoring scientific integrity to government decision making. To ensure that in this new Administration, we base our public policies on the soundest science; that we appoint scientific advisers based on their credentials and experience, not their politics or ideology; and that we are open and honest with the American people about the science behind our decisions. That is how we will harness the power of science to achieve our goals -- to preserve our environment and protect our national security; to create the jobs of the future, and live longer, healthier lives. As we restore our commitment to science, and resume funding

	<p>for promising stem cell research, we owe a debt of gratitude to so many tireless advocates, some of whom are with us today, many of whom are not. Today, we honor all those whose names we don't know, who organized, and raised awareness, and kept on fighting -- even when it was too late for them, or for the people they love. And we honor those we know, who used their influence to help others and bring attention to this cause -- people like Christopher and Dana Reeve, who we wish could be here to see this moment.</p> <p>One of Christopher's friends recalled that he hung a sign on the wall of the exercise room where he did his grueling regimen of physical therapy. It read: "For everyone who thought I couldn't do it. For everyone who thought I shouldn't do it. For everyone who said, 'It's impossible.' See you at the finish line."</p> <p>Christopher once told a reporter who was interviewing him: "If you came back here in ten years, I expect that I'd walk to the door to greet you." Christopher did not get that chance. But if we pursue this research, maybe one day -- maybe not in our lifetime, or even in our children's lifetime -- but maybe one day, others like him might.</p>
Science and religion	<p>There is no finish line in the work of science. The race is always with us -- the urgent work of giving substance to hope and answering those many bedside prayers, of seeking a day when words like "terminal" and "incurable" are finally retired from our vocabulary.</p>
America, the scientific	<p>Today, using every resource at our disposal, with renewed determination to lead the world in the discoveries of this new century, we rededicate ourselves to this work.</p>
Religious ending	<p>Thank you, God bless you, and may God bless America.</p> <p>END</p>

JUNE 15, 2009 – WASHINGTON, D.C. OBAMA’S SPEECH ON HEALTH CARE REFORM AT THE AMERICAN MEDICAL ASSOCIATION’S ANNUAL CONFERENCE, AS RELEASED BY THE WHITE HOUSE.

New Deal	From the moment I took office as President, the central challenge we have confronted as a nation has been the need to lift ourselves out of the worst recession since World War II . In recent months, we have taken a series of extraordinary steps, not just to repair the immediate damage to our economy, but to build a new foundation for lasting and sustained growth. We are creating new jobs. We are unfreezing our credit markets. And we are stemming the loss of homes and the decline of home values.
The road to prosperity	But even as we have made progress, we know that the road to prosperity remains long and difficult. We also know that one essential step on our journey is to control the spiraling cost of health care in America . Today, we are spending over \$2 trillion a year on health care – almost 50 percent more per person than the next most costly nation.
Statistics	And yet, for all this spending, more of our citizens are uninsured ; the quality of our care is often lower; and we aren't any healthier. In fact, citizens in some countries that spend less than we do are actually living longer than we do.
Long term effect of high cost.	Make no mistake: the cost of our health care is a threat to our economy. It is an escalating burden on our families and businesses. It is a ticking time-bomb for the federal budget. And it is unsustainable for the United States of America.
Unworthy situation of a wealthy nation	It is unsustainable for Americans like Laura Klitzka, a young mother I met in Wisconsin last week, who has learned that the breast cancer she thought she'd beaten had spread to her bones; who is now being forced to spend time worrying about how to cover the \$50,000 in medical debts she has already accumulated, when all she wants to do is spend time with her two children and focus on getting well. These are not worries a

	woman like Laura should have to face in a nation as wealthy as ours.
It affects all Americans	Stories like Laura's are being told by women and men all across this country – by families who have seen out-of-pocket costs soar, and premiums double over the last decade at a rate three times faster than wages. This is forcing Americans of all ages to go without the checkups or prescriptions they need. It's creating a situation where a single illness can wipe out a lifetime of savings.
It affects doctors	Our costly health care system is unsustainable for doctors like Michael Kahn in New Hampshire, who, as he puts it, spends 20 percent of each day supervising a staff explaining insurance problems to patients, completing authorization forms, and writing appeal letters; a routine that he calls disruptive and distracting, giving him less time to do what he became a doctor to do and actually care for his patients.
It affects small business owners	Small business owners like Chris and Becky Link in Nashville are also struggling. They've always wanted to do right by the workers at their family-run marketing firm, but have recently had to do the unthinkable and lay off a number of employees – layoffs that could have been deferred, they say, if health care costs weren't so high. Across the country, over one third of small businesses have reduced benefits in recent years and one third have dropped their workers' coverage altogether since the early 90's.
It affects large companies	Our largest companies are suffering as well. A big part of what led General Motors and Chrysler into trouble in recent decades were the huge costs they racked up providing health care for their workers; costs that made them less profitable, and less competitive with automakers around the world. If we do not fix our health care system, America may go the way of GM; paying more, getting less, and going broke.
Need for	When it comes to the cost of our health care, then, the status

reform	quo is unsustainable. Reform is not a luxury, but a necessity. I know there has been much discussion about what reform would cost, and rightly so. This is a test of whether we – Democrats and Republicans alike – are serious about holding the line on new spending and restoring fiscal discipline.
	But let there be no doubt – the cost of inaction is greater. If we fail to act, premiums will climb higher, benefits will erode further, and the rolls of uninsured will swell to include millions more Americans.
Stats	If we fail to act, one out of every five dollars we earn will be spent on health care within a decade. In thirty years, it will be about one out of every three – a trend that will mean lost jobs, lower take-home pay, shuttered businesses, and a lower standard of living for all Americans.
	And if we fail to act, federal spending on Medicaid and Medicare will grow over the coming decades by an amount almost equal to the amount our government currently spends on our nation's defense. In fact, it will eventually grow larger than what our government spends on anything else today. It's a scenario that will swamp our federal and state budgets, and impose a vicious choice of either unprecedented tax hikes, overwhelming deficits, or drastic cuts in our federal and state budgets.
Link with fiscal health	To say it as plainly as I can, health care reform is the single most important thing we can do for America's long-term fiscal health. That is a fact.
Fear of change	And yet, as clear as it is that our system badly needs reform, reform is not inevitable. There's a sense out there among some that, as bad as our current system may be, the devil we know is better than the devil we don't. There is a fear of change – a worry that we may lose what works about our health care system while trying to fix what doesn't.
History of	I understand that fear. I understand that cynicism. They are

failure	scars left over from past efforts at reform. Presidents have called for health care reform for nearly a century. Teddy Roosevelt called for it. Harry Truman called for it. Richard Nixon called for it. Jimmy Carter called for it. Bill Clinton called for it. But while significant individual reforms have been made – such as Medicare, Medicaid, and the children's health insurance program – efforts at comprehensive reform that covers everyone and brings down costs have largely failed.
Reform seen as attempt to socialize medicine.	Part of the reason is because the different groups involved – physicians, insurance companies, businesses, workers, and others – simply couldn't agree on the need for reform or what shape it would take. And another part of the reason has been the fierce opposition fueled by some interest groups and lobbyists – opposition that has used fear tactics to paint any effort to achieve reform as an attempt to socialize medicine.
Hope in bill on smoking	Despite this long history of failure, I am standing here today because I think we are in a different time. One sign that things are different is that just this past week, the Senate passed a bill that will protect children from the dangers of smoking – a reform the AMA has long championed – and one that went nowhere when it was proposed a decade ago. What makes this moment different is that this time – for the first time – key stakeholders are aligning not against, but in favor of reform. They are coming together out of a recognition that while reform will take everyone in our health care community doing their part, ultimately, everyone will benefit.
Hope in agreement to cut down costs.	And I want to commend the AMA, in particular, for offering to do your part to curb costs and achieve reform. A few weeks ago, you joined together with hospitals, labor unions, insurers, medical device manufacturers and drug companies to do something that would've been unthinkable just a few years ago – you promised to work together to cut national health care spending by two trillion dollars over the next decade, relative to

	what it would otherwise have been. That will bring down costs, that will bring down premiums, and that's exactly the kind of cooperation we need.
Balance	The question now is, how do we finish the job? How do we permanently bring down costs and make quality, affordable health care available to every American?
Historic opportunity. Socialized medicine	That's what I've come to talk about today. We know the moment is right for health care reform. We know this is an historic opportunity we've never seen before and may not see again. But we also know that there are those who will try and scuttle this opportunity no matter what – who will use the same scare tactics and fear-mongering that's worked in the past. They'll give dire warnings about socialized medicine and government takeovers; long lines and rationed care; decisions made by bureaucrats and not doctors. We've heard it all before – and because these fear tactics have worked, things have kept getting worse.
Simple principle: fix what's broken and build on what works.	So let me begin by saying this: I know that there are millions of Americans who are content with their health care coverage – they like their plan and they value their relationship with their doctor. And that means that no matter how we reform health care, we will keep this promise: If you like your doctor, you will be able to keep your doctor. If you like your health care plan, you will be able to keep your health care plan. No one will take it away. No matter what. My view is that health care reform should be guided by a simple principle: fix what's broken and build on what works.
Economics	If we do that, we can build a health care system that allows you to be physicians instead of administrators and accountants; a system that gives Americans the best care at the lowest cost; a system that eases up the pressure on businesses and unleashes the promise of our economy, creating hundreds of thousands of jobs, making take-home wages thousands of

	dollars higher, and growing our economy by tens of billions more every year. That's how we will stop spending tax dollars to prop up an unsustainable system, and start investing those dollars in innovations and advances that will make our health care system and our economy stronger.
Seize the day	That's what we can do with this opportunity. That's what we must do with this moment.
Steps:	Now, the good news is that in some instances, there is already widespread agreement on the steps necessary to make our health care system work better.
Electronic medical records	First, we need to upgrade our medical records by switching from a paper to an electronic system of record keeping . And we have already begun to do this with an investment we made as part of our Recovery Act.
Current situation	It simply doesn't make sense that patients in the 21st century are still filling out forms with pens on papers that have to be stored away somewhere. As Newt Gingrich has rightly pointed out, we do a better job tracking a FedEx package in this country than we do tracking a patient's health records. You shouldn't have to tell every new doctor you see about your medical history, or what prescriptions you're taking. You should not have to repeat costly tests. All of that information should be stored securely in a private medical record so that your information can be tracked from one doctor to another – even if you change jobs, even if you move, and even if you have to see a number of different specialists.
Benefits	That will not only mean less paper pushing and lower administrative costs, saving taxpayers billions of dollars. It will also make it easier for physicians to do their jobs. It will tell you, the doctors, what drugs a patient is taking so you can avoid prescribing a medication that could cause a harmful interaction. It will help prevent the wrong dosages from going to a patient. And it will reduce medical errors that lead to 100,000 lives lost

	unnecessarily in our hospitals every year.
Preventive care	The second step that we can all agree on is to invest more in preventive care so that we can avoid illness and disease in the first place. That starts with each of us taking more responsibility for our health and the health of our children. It means quitting smoking, going in for that mammogram or colon cancer screening. It means going for a run or hitting the gym, and raising our children to step away from the video games and spend more time playing outside.
Junk food	It also means cutting down on all the junk food that is fueling an epidemic of obesity, putting far too many Americans, young and old, at greater risk of costly, chronic conditions. That's a lesson Michelle and I have tried to instill in our daughters with the White House vegetable garden that Michelle planted. And that's a lesson that we should work with local school districts to incorporate into their school lunch programs.
Preventive measures	<p>Building a health care system that promotes prevention rather than just managing diseases will require all of us to do our part. It will take doctors telling us what risk factors we should avoid and what preventive measures we should pursue. And it will take employers following the example of places like Safeway that is rewarding workers for taking better care of their health while reducing health care costs in the process. If you're one of the three quarters of Safeway workers enrolled in their "Healthy Measures" program, you can get screened for problems like high cholesterol or high blood pressure. And if you score well, you can pay lower premiums. It's a program that has helped Safeway cut health care spending by 13 percent and workers save over 20 percent on their premiums. And we are open to doing more to help employers adopt and expand programs like this one.</p> <p>Our federal government also has to step up its efforts to advance the cause of healthy living. Five of the costliest</p>

	<p>illnesses and conditions – cancer, cardiovascular disease, diabetes, lung disease, and strokes – can be prevented. And yet only a fraction of every health care dollar goes to prevention or public health. That is starting to change with an investment we are making in prevention and wellness programs that can help us avoid diseases that harm our health and the health of our economy.</p> <p>But as important as they are, investments in electronic records and preventive care are just preliminary steps. They will only make a dent in the epidemic of rising costs in this country.</p>
Costs	<p>Despite what some have suggested, the reason we have these costs is not simply because we have an aging population. Demographics do account for part of rising costs because older, sicker societies pay more on health care than younger, healthier ones. But what accounts for the bulk of our costs is the nature of our health care system itself – a system where we spend vast amounts of money on things that aren't making our people any healthier; a system that automatically equates more expensive care with better care.</p>
Spending areas	<p>A recent article in the New Yorker, for example, showed how McAllen, Texas is spending twice as much as El Paso County – not because people in McAllen are sicker and not because they are getting better care. They are simply using more treatments – treatments they don't really need; treatments that, in some cases, can actually do people harm by raising the risk of infection or medical error. And the problem is, this pattern is repeating itself across America. One Dartmouth study showed that you're no less likely to die from a heart attack and other ailments in a higher spending area than in a lower spending one.</p>
1 st Structural reform system – of	<p>There are two main reasons for this. The first is a system of incentives where the more tests and services are provided, the more money we pay. And a lot of people in this room know</p>

incentives	what I'm talking about. It is a model that rewards the quantity of care rather than the quality of care; that pushes you, the doctor, to see more and more patients even if you can't spend much time with each; and gives you every incentive to order that extra MRI or EKG, even if it's not truly necessary. It is a model that has taken the pursuit of medicine from a profession – a calling – to a business.
	That is not why you became doctors. That is not why you put in all those hours in the Anatomy Suite or the O.R. That is not what brings you back to a patient's bedside to check in or makes you call a loved one to say it'll be fine. You did not enter this profession to be bean-counters and paper-pushers. You entered this profession to be healers – and that's what our health care system should let you be.
Compensating doctors and hospitals	That starts with reforming the way we compensate our doctors and hospitals. We need to bundle payments so you aren't paid for every single treatment you offer a patient with a chronic condition like diabetes, but instead are paid for how you treat the overall disease. We need to create incentives for physicians to team up – because we know that when that happens, it results in a healthier patient. We need to give doctors bonuses for good health outcomes – so that we are not promoting just more treatment, but better care.
Cost of medical education	And we need to rethink the cost of a medical education, and do more to reward medical students who choose a career as a primary care physicians and who choose to work in underserved areas instead of a more lucrative path. That's why we are making a substantial investment in the National Health Service Corps that will make medical training more affordable for primary care doctors and nurse practitioners so they aren't drowning in debt when they enter the workforce.

2 nd Structural Reform	<p>The second structural reform we need to make is to improve the quality of medical information making its way to doctors and patients. We have the best medical schools, the most sophisticated labs, and the most advanced training of any nation on the globe. Yet we are not doing a very good job harnessing our collective knowledge and experience on behalf of better medicine. Less than one percent of our health care spending goes to examining what treatments are most effective. And even when that information finds its way into journals, it can take up to 17 years to find its way to an exam room or operating table.</p> <p>As a result, too many doctors and patients are making decisions without the benefit of the latest research. A recent study, for example, found that only half of all cardiac guidelines are based on scientific evidence. Half. That means doctors may be doing a bypass operation when placing a stent is equally effective, or placing a stent when adjusting a patient's drugs and medical management is equally effective – driving up costs without improving a patient's health.</p>
Investment in research	<p>So, one thing we need to do is figure out what works, and encourage rapid implementation of what works into your practices. That's why we are making a major investment in research to identify the best treatments for a variety of ailments and conditions.</p>
Providing information	<p>Let me be clear: identifying what works is not about dictating what kind of care should be provided. It's about providing patients and doctors with the information they need to make the best medical decisions.</p>
Feedback from patients	<p>Still, even when we do know what works, we are often not making the most of it. That's why we need to build on the examples of outstanding medicine at places like the Cincinnati Children's Hospital, where the quality of care for cystic fibrosis patients shot up after the hospital began incorporating</p>

	<p>suggestions from parents. And places like Tallahassee Memorial Health Care, where deaths were dramatically reduced with rapid response teams that monitored patients' conditions and "multidisciplinary rounds" with everyone from physicians to pharmacists. And places like the Geisinger Health system in rural Pennsylvania and the Intermountain Health in Salt Lake City, where high-quality care is being provided at a cost well below average. These are islands of excellence that we need to make the standard in our health care system.</p>
<p>"I need your help, doctors."</p>	<p>Replicating best practices. Incentivizing excellence. Closing cost disparities. Any legislation sent to my desk that does not achieve these goals does not earn the title of reform. But my signature on a bill is not enough. I need your help, doctors. To most Americans, you are the health care system. Americans – me included – just do what you recommend. That is why I will listen to you and work with you to pursue reform that works for you. And together, if we take all these steps, we can bring spending down, bring quality up, and save hundreds of billions of dollars on health care costs while making our health care system work better for patients and doctors alike.</p>
<p>Defensive medicine</p>	<p>Now, I recognize that it will be hard to make some of these changes if doctors feel like they are constantly looking over their shoulder for fear of lawsuits. Some doctors may feel the need to order more tests and treatments to avoid being legally vulnerable. That's a real issue. And while I'm not advocating caps on malpractice awards which I believe can be unfair to people who've been wrongfully harmed, I do think we need to explore a range of ideas about how to put patient safety first, let doctors focus on practicing medicine, and encourage broader use of evidence-based guidelines. That's how we can scale back the excessive defensive medicine reinforcing our current system of more treatment rather than better care.</p>

MPAC	<p>These changes need to go hand-in-hand with other reforms. Because our health care system is so complex and medicine is always evolving, we need a way to continually evaluate how we can eliminate waste, reduce costs, and improve quality. That is why I am open to expanding the role of a commission created by a Republican Congress called the Medicare Payment Advisory Commission – which happens to include a number of physicians. In recent years, this commission proposed roughly \$200 billion in savings that never made it into law. These recommendations have now been incorporated into our broader reform agenda, but we need to fast-track their proposals in the future so that we don't miss another opportunity to save billions of dollars, as we gain more information about what works and what doesn't in our health care system.</p>
Free riders	<p>As we seek to contain the cost of health care, we must also ensure that every American can get coverage they can afford. We must do so in part because it is in all of our economic interests. Each time an uninsured American steps foot into an emergency room with no way to reimburse the hospital for care, the cost is handed over to every American family as a bill of about \$1,000 that is reflected in higher taxes, higher premiums, and higher health care costs; a hidden tax that will be cut as we insure all Americans. And as we insure every young and healthy American, it will spread out risk for insurance companies, further reducing costs for everyone.</p>
46 million uninsured	<p>But alongside these economic arguments, there is another, more powerful one. It is simply this: We are not a nation that accepts nearly 46 million uninsured men, women, and children. We are not a nation that lets hardworking families go without the coverage they deserve; or turns its back on those in need. We are a nation that cares for its citizens. We are a people who look out for one another. That is what makes this the United</p>

	States of America.
Have and have not insurance.	<p>So, we need to do a few things to provide affordable health insurance to every single American. The first thing we need to do is protect what's working in our health care system. Let me repeat – if you like your health care, the only thing reform will mean is your health care will cost less. If anyone says otherwise, they are either trying to mislead you or don't have their facts straight.</p> <p>If you don't like your health coverage or don't have any insurance, you will have a chance to take part in what we're calling a Health Insurance Exchange. This Exchange will allow you to one-stop shop for a health care plan, compare benefits and prices, and choose a plan that's best for you and your family – just as federal employees can do, from a postal worker to a Member of Congress. You will have your choice of a number of plans that offer a few different packages, but every plan would offer an affordable, basic package. And one of these options needs to be a public option that will give people a broader range of choices and inject competition into the health care market so that force waste out of the system and keep the insurance companies honest.</p>
Avoid piece-work reimbursement. Sound financial footing.	<p>Now, I know there's some concern about a public option. In particular, I understand that you are concerned that today's Medicare rates will be applied broadly in a way that means our cost savings are coming off your backs. These are legitimate concerns, but ones, I believe, that can be overcome. As I stated earlier, the reforms we propose are to reward best practices, focus on patient care, not the current piece-work reimbursement. What we seek is more stability and a health care system on a sound financial footing. And these reforms need to take place regardless of what happens with a public option. With reform, we will ensure that you are being reimbursed in a thoughtful way tied to patient outcomes instead</p>

		of relying on yearly negotiations about the Sustainable Growth Rate formula that's based on politics and the state of the federal budget in any given year. The alternative is a world where health care costs grow at an unsustainable rate, threatening your reimbursements and the stability of our health care system.
Not a government-run health care	a	What are not legitimate concerns are those being put forward claiming a public option is somehow a Trojan horse for a single-payer system . I'll be honest. There are countries where a single-payer system may be working. But I believe – and I've even taken some flak from members of my own party for this belief – that it is important for us to build on our traditions here in the United States . So, when you hear the naysayers claim that I'm trying to bring about government-run health care , know this – they are not telling the truth.
Universal		What I am trying to do – and what a public option will help do – is put affordable health care within reach for millions of Americans. And to help ensure that everyone can afford the cost of a health care option in our Exchange, we need to provide assistance to families who need it. That way, there will be no reason at all for anyone to remain uninsured.
Hardship waiver		Indeed, it is because I am confident in our ability to give people the ability to get insurance that I am open to a system where every American bears responsibility for owning health insurance , so long as we provide a hardship waiver for those who still can't afford it. The same is true for employers. While I believe every business has a responsibility to provide health insurance for its workers, small businesses that cannot afford it should receive an exemption. And small business workers and their families will be able to seek coverage in the Exchange if their employer is not able to provide it.
Preexisting conditions	–	Insurance companies have expressed support for the idea of covering the uninsured – and I welcome their willingness to

cherry-picking	engage constructively in the reform debate. But what I refuse to do is simply create a system where insurance companies have more customers on Uncle Sam's dime, but still fail to meet their responsibilities. That is why we need to end the practice of denying coverage on the basis of preexisting conditions. The days of cherry-picking who to cover and who to deny – those days are over.
Personal	This is personal for me. I will never forget watching my own mother, as she fought cancer in her final days, worrying about whether her insurer would claim her illness was a preexisting condition so it could get out of providing coverage. Changing the current approach to preexisting conditions is the least we can do – for my mother and every other mother, father, son, and daughter, who has suffered under this practice. And it will put health care within reach for millions of Americans.
Deficit neutral	Now, even if we accept all of the economic and moral reasons for providing affordable coverage to all Americans, there is no denying that it will come at a cost – at least in the short run. But it is a cost that will not – I repeat, not – add to our deficits. Health care reform must be and will be deficit neutral in the next decade.
Costs	There are already voices saying the numbers don't add up. They are wrong. Here's why. Making health care affordable for all Americans will cost somewhere on the order of one trillion dollars over the next ten years. That sounds like a lot of money – and it is. But remember: it is less than we are projected to spend on the war in Iraq. And also remember: failing to reform our health care system in a way that genuinely reduces cost growth will cost us trillions of dollars more in lost economic growth and lower wages.
How to cover costs Health Reserve	That said, let me explain how we will cover the price tag. First, as part of the budget that was passed a few months ago, we've put aside \$635 billion over ten years in what we are calling a

Fund	Health Reserve Fund. Over half of that amount – more than \$300 billion – will come from raising revenue by doing things like modestly limiting the tax deductions the wealthiest Americans can take to the same level it was at the end of the Reagan years. Some are concerned this will dramatically reduce charitable giving, but statistics show that's not true, and the best thing for our charities is the stronger economy that we will build with health care reform.
Inefficiencies in Medicare programme.	But we cannot just raise revenues. We also have to make spending cuts in part by examining inefficiencies in the Medicare program. There will be a robust debate about where these cuts should be made, and I welcome that debate. But here's where I think these cuts should be made.
Overpayments to Medicare Advantage	First, we should end overpayments to Medicare Advantage. Today, we are paying Medicare Advantage plans much more than we pay for traditional Medicare services. That's a good deal for insurance companies, but not the American people. That's why we need to introduce competitive bidding into the Medicare Advantage program, a program under which private insurance companies offer Medicare coverage. That will save \$177 billion over the next decade.
Reduce preventable hospital readmissions	Second, we need to use Medicare reimbursements to reduce preventable hospital readmissions. Right now, almost 20 percent of Medicare patients discharged from hospitals are readmitted within a month, often because they are not getting the comprehensive care they need. This puts people at risk and drives up costs. By changing how Medicare reimburses hospitals, we can discourage them from acting in a way that boosts profits, but drives up costs for everyone else. That will save us \$25 billion over the next decade.
Generic biologic drugs	Third, we need to introduce generic biologic drugs into the marketplace. These are drugs used to treat illnesses like anemia. But right now, there is no pathway at the FDA for

	<p>approving generic versions of these drugs. Creating such a pathway will save us billions of dollars. And we can save another roughly \$30 billion by getting a better deal for our poorer seniors while asking our well-off seniors to pay a little more for their drugs.</p>
Medicare payments	<p>So, that's the bulk of what's in the Health Reserve Fund. I have also proposed saving another \$313 billion in Medicare and Medicaid spending in several other ways. One way is by adjusting Medicare payments to reflect new advances and productivity gains in our economy. Right now, Medicare payments are rising each year by more than they should. These adjustments will create incentives for providers to deliver care more effectively, and save us roughly \$109 billion in the process.</p>
Treating uninsured people	<p>Another way we can achieve savings is by reducing payments to hospitals for treating uninsured people. I know hospitals rely on these payments now because of the large number of uninsured patients they treat. But as the number of uninsured people goes down with our reforms, the amount we pay hospitals to treat uninsured people should go down, as well. Reducing these payments gradually as more and more people have coverage will save us over \$106 billion, and we'll make sure the difference goes to the hospitals that most need it.</p>
Prescription drugs	<p>We can also save about \$75 billion through more efficient purchasing of prescription drugs. And we can save about one billion more by rooting out waste, abuse, and fraud throughout our health care system so that no one is charging more for a service than it's worth or charging a dime for a service they did not provide.</p>
Senior citizens	<p>But let me be clear: I am committed to making these cuts in a way that protects our senior citizens. In fact, these proposals will actually extend the life of the Medicare Trust Fund by 7 years and reduce premiums for Medicare beneficiaries by</p>

	roughly \$43 billion over 10 years. And I'm working with AARP to uphold that commitment.
Payment	Altogether, these savings mean that we have put about \$950 billion on the table – not counting some of the longer-term savings that will come about from reform – taking us almost all the way to covering the full cost of health care reform. In the weeks and months ahead, I look forward to working with Congress to make up the difference so that health care reform is fully paid for – in a real, accountable way. And let me add that this does not count some of the longer-term savings that will come about from health care reform. By insisting that reform be deficit neutral over the next decade and by making the reforms that will help slow the growth rate of health care costs over coming decades, we can look forward to faster economic growth, higher living standards, and falling, not rising, budget deficits.
The moment	I know people are cynical we can do this. I know there will be disagreements about how to proceed in the days ahead. But I also know that we cannot let this moment pass us by.
Problems dating back to the 60s	The other day, my friend, Congressman Earl Blumenauer, handed me a magazine with a special issue titled, "The Crisis in American Medicine." One article notes "soaring charges." Another warns about the "volume of utilization of services." And another asks if we can find a "better way [than fee-for-service] for paying for medical care." It speaks too many of the challenges we face today. The thing is, this special issue was published by Harper's Magazine in October of 1960.
Need for reform	Members of the American Medical Association – my fellow Americans – I am here today because I do not want our children and their children to still be speaking of a crisis in American medicine fifty years from now. I do not want them to still be suffering from spiraling costs we did not stem, or sicknesses we did not cure. I do not want them to be burdened

	with massive deficits we did not curb or a worsening economy we did not rebuild.
Outcome	I want them to benefit from a health care system that works for all of us; where families can open a doctor's bill without dreading what's inside; where parents are taking their kids to get regular checkups and testing themselves for preventable ailments; where parents are feeding their kids healthier food and kids are exercising more; where patients are spending more time with doctors and doctors can pull up on a computer all the medical information and latest research they'd ever want to meet that patient's needs; where orthopedists and nephrologists and oncologists are all working together to treat a single human being; where what's best about America's health care system has become the hallmark of America's health care system.
Future	That is the health care system we can build. That is the future within our reach. And if we are willing to come together and bring about that future, then we will not only make Americans healthier and not only unleash America's economic potential, but we will reaffirm the ideals that led you into this noble profession, and build a health care system that lets all Americans heal. Thank you.

JUNE 22, 2009 - WASHINGTON, D.C. OBAMA ADDRESSES SENIORS AND PRESCRIPTION DRUGS. LOCATION: DIPLOMATIC RECEPTION ROOM – WHITE HOUSE.

	<p>OBAMA: Thank you very much. Thank you. Well, first of all, I want to thank Barry Rand for the introduction, but also AARP, the organization he so ably represents, for coming together with us on this critical issue today.</p> <p>Last week in my address to the American Medical Association, I spoke about the urgent need for health care</p>
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	<p>reform and what will be required to achieve it.</p> <p>One of the things that will be required, I said, was that everyone in our health care community is going to have to come together and do their part.</p>
Prescription drugs	<p>In recent days, Chairman Max Baucus, who's been doing an outstanding job leading the Finance Committee on this issue, as well as members of my administration, have been in discussions with the pharmaceutical industry to find a way to bring down costs of prescription drugs for America's seniors.</p>
Donut hole	<p>And I'm pleased to report that over the weekend we reached an understanding that will help close the notorious donut hole in Medicare Part D.</p>
Seniors and medication	<p>This is a significant breakthrough on the road to health care reform, one that will make the difference in the lives of many older Americans.</p>
	<p>I think many of you in the press are familiar with the issue. The donut hole refers to a gap in prescription drug coverage that makes it harder for millions of Medicare beneficiaries to pay for the medication they need.</p>
	<p>The way the program is structured, Medicare covers up to \$2,700 in yearly prescription costs and then stops. And the coverage starts back up when the costs exceed \$6,100. Which means between \$2,700 and \$6,100, folks are out of luck. This gap in coverage has been placing a crushing burden on many older Americans who live on fixed incomes and can't afford thousands of dollars in out-of-pocket expenses.</p>
	<p>Chris Dodd, who's been an outstanding leader on a whole host of health care issues throughout his career and who's helping to lead the HELP Committee while Senator Kennedy is undergoing his treatment for his illness -- Chris, I think, will tell you that as we travel around the country, seniors would</p>

		constantly be coming up to us and saying, "How do we deal with this extraordinary burden?"
		OBAMA: And, as a consequence, you'd have seniors who would be taking half their medications , even though the doctor said, "That is not going to be as effective. You are putting your life at risk." They had no other choice.
		So as part of the health care reform I expect Congress to enact this year, Medicare beneficiaries whose spending falls within this gap will now receive a discount on prescription drugs of at least 50 percent from the negotiated price they're paying -- their plan pays.
		It's a reform that will make prescription drugs more affordable for millions of seniors and restore a measure of fairness to Medicare Part D.
		And it's a reflection of the importance of this single step for America's seniors that it has earned the support of AARP, which has been fighting for years to address this anomaly in the system on behalf of older Americans.
		AARP is committed, as I am, to achieving health care reform by the end of this year. And I'm committed to continuing to work with AARP to ensure that any reforms we pursue are carried out in a way that protects American seniors, who know as well as anyone what's wrong with our health care system and why it's badly in need of reform.
		Our goal, our imperative, is to reduce the punishing inflation in health care costs while improving patient care. And to do that, we're going to have to work together to root out waste and inefficiencies that may pad the bottom line of the insurance industry, but add nothing to the health of our nation.
		To that end, the pharmaceutical industry has committed to reduce its draw on the health care system by \$80 billion over the next 10 years as part of overall health care reform.
Costs	and	Real health care reform that reduces the spiraling costs of

quality	health services and extends quality , affordable health coverage to all Americans will require these kinds of commitments throughout the system.
	Drug and insurance companies stand to benefit when tens of millions more Americans have coverage. So we're asking them in exchange to make essential concessions to reform the system and help reduce costs. It's only fair.
	Today marks a major step forward, but it only be meaningful if we complete the journey.
	OBAMA: So I want to commend the House for coming together last week to produce a health care reform bill; a bill, I might note, that protects seniors and has received the support of the AARP.
	I will continue to work closely with the relevant chairs in the House and the Senate, and leaders like Senator Dodd and Senator Baucus, and with members of both parties who are willing to commit themselves to this critical task.
	Our families, our businesses and our long-term fiscal health demands that we act and act now. Today, we are. And I'm grateful to all those who helped make this day possible.
American Exceptionalism	<p>And to those who -- here in Washington who've grown accustomed to sky-is-falling prognoses and the certainties that we cannot get this done, I have to repeat and revive an old saying we had from the campaign: Yes, we can. We are going to get this done.</p> <p>Thank you very much, everybody. END</p>

SEPTEMBER 9, 2009 – WASHINGTON, D.C. – PRESIDENT OBAMA'S ADDRESS TO A JOINT SESSION OF CONGRESS ON HEALTH CARE. U.S. CAPITOL.	
	OBAMA: Madame Speaker, Vice President Biden, members of Congress, and the American people:
Crisis	When I spoke here last winter, this nation was facing the worst economic crisis since the Great Depression . We were losing an average of 700,000 jobs per month, credit was frozen, and our financial system was on the verge of collapse.
Recovery Unemployment	OBAMA: As any American who is still looking for work or a way to pay their bills will tell you, we are by no means out of the woods. A full and vibrant recovery is still many months away. And I will not let up until those Americans who seek jobs can find them. (APPLAUSE) Until -- until those -- until those businesses that seek capital and credit can thrive. Until all responsible homeowners can stay in their homes.
Economy	OBAMA: That it our ultimate goal. But thanks to the bold and decisive action we've taken since January, I can stand here with confidence and say that we have pulled this economy back from the brink. (APPLAUSE) Now, I want to thank the members of this body for your efforts and your support in these last several months, and especially those who have taken the difficult votes that have put us on the path to recovery.
American exceptionalism	I also want to thank the American people for their patience and resolve during this trying time for our nation. But we did not come here just to clean up crises. We came here to build a future . So... (APPLAUSE). So tonight, I return to speak to all of you about an issue that is central to that future, and that is the issue of health care .
History	I am not the first president to take up this cause , but I am determined to be the last.

	<p>(APPLAUSE) It has now been nearly a century since Theodore Roosevelt first called for health care reform.</p> <p>OBAMA: And ever since, nearly every president and Congress, whether Democrat or Republican, has attempted to meet this challenge in some way. A bill for comprehensive health reform was first introduced by John Dingell, Sr., in 1943. Sixty-five years later, his son continues to introduce that same bill at the beginning of each session. (APPLAUSE)</p>
Unaffordable insurance	<p>Our collective failure to meet this challenge year after year, decade after decade, has led us to the breaking point. Everyone understands the extraordinary hardships that are placed on the uninsured who live every day just one accident or illness away from bankruptcy. These are not primarily people on welfare. These are middle class Americans. Some can't get insurance on the job. Others are self-employed and can't afford it since buying insurance on your own costs you three times as much as the coverage you get from your employer.</p>
Pre-existing condition	<p>Many other Americans who are willing and able to pay are still denied insurance due to previous illnesses or conditions that insurance companies decide are too risky or too expensive to cover.</p>
Comparison	<p>OBAMA: We are the only democracy, the only advanced democracy on Earth, the only wealthy nation that allows such hardship for millions of its people.</p>
Unattainable coverage	<p>There are now more than 30 million American citizens who cannot get coverage. In just a two-year period, one in every three Americans goes without health care coverage at some point. And every day, 14,000 Americans lose their coverage. In other words, it can happen to anyone.</p>
Insecurity	<p>But the problem that plagues the health care system is not just a problem for the uninsured. Those who do have insurance have never had less security and stability than they do today.</p>

	<p>More and more Americans worry that if you move, lose your job or change your job, you'll lose your health insurance, too. More and more Americans pay their premiums, only to discover that their insurance company has dropped their coverage when they get sick, or won't pay the full cost of care. It happens every day.</p>
Examples	<p>One man from Illinois lost his coverage in the middle of chemotherapy because his insurer found that he hadn't reported gallstones that he didn't even know about. They delayed his treatment, and he died because of it.</p> <p>Another woman, from Texas, was about to get a double mastectomy when her insurance company canceled her policy because she forgot to declare a case of acne. By the time she had her insurance reinstated, her breast cancer had more than doubled in size.</p>
American exceptionalism	<p>That is heartbreaking, it is wrong, and no one should be treated that way in the United States of America. (APPLAUSE)</p>
Rising costs	<p>OBAMA: Then there's the problem of rising costs. We spend one- and-a-half times more per person on health care than any other country, but we aren't any healthier for it. This is one of the reasons that insurance premiums have gone up three times faster than wages.</p>
Health affecting economics	<p>It's why so many employers, especially small businesses, are forcing their employers -- employees to pay more for insurance, or are dropping their coverage entirely.</p> <p>It's why so many aspiring entrepreneurs cannot afford to open a business in the first place, and why American businesses that compete internationally, like our automakers, are at a huge disadvantage.</p> <p>And it's why those of us with health insurance are also paying a hidden and growing tax for those without it, about \$1,000 per year that pays for somebody else's emergency room and</p>

	<p>charitable care.</p> <p>Finally, our health care system is placing an unsustainable burden on taxpayers. When health care costs grow at the rate they have, it puts greater pressure on programs like Medicare and Medicaid.</p>
Costs	<p>If we do nothing to slow these skyrocketing costs, we will eventually be spending more on Medicare and Medicaid than every other government program combined.</p>
Deficit problem	<p>OBAMA: Put simply, our health care problem is our deficit problem. Nothing else even comes close. (APPLAUSE) Nothing else. (APPLAUSE)</p>
<p>Facts – situation in America Single-payer system</p>	<p>Now, these are the facts. Nobody disputes them. We know we must reform this system. The question is how. Now, there are those on the left who believe that the only way to fix the system is through a single-payer system like Canada's, where we would -- where we would severely restrict the private insurance market and have the government provide coverage for everybody.</p>
<p>Employer – based system</p>	<p>On the right, there are those who argue that we should end employer-based systems and leave individuals to buy health insurance on their own.</p>
Build on what works	<p>I have said -- I have to say that there are arguments to be made for both these approaches. But either one would represent a radical shift that would disrupt the health care most people currently have. Since health care represents one-sixth of our economy, I believe it makes more sense to build on what works and fix what doesn't, rather than try to build an entirely new system from scratch. (APPLAUSE)</p>
Washington	<p>And that is precisely what those of you in Congress have tried to do over the several -- past several months. During that time, we've seen Washington at its best and at its worst. We've seen many in this chamber work tirelessly for the better part of this year to offer thoughtful ideas about how to achieve reform. Of</p>

	the five committees asked to develop bills, four have completed their work and the Senate Finance Committee announced today that it will move forward next week.
Exceptionality	OBAMA: That has never happened before.
Support by the people	Our overall efforts have been supported by an unprecedented coalition of doctors and nurses, hospitals, seniors' groups, and even drug companies -- many of whom opposed reform in the past.
Partisanship	And there is agreement in this chamber on about 80 percent of what needs to be done, putting us closer to the goal of reform than we have ever been.
AE – distrust of government	But what we've also seen in these last months is the same partisan spectacle that only hardens the disdain many Americans have towards their own government . Instead of honest debate, we've seen scare tactics. Some have dug into unyielding ideological camps that offer no hope of compromise. Too many have used this as an opportunity to score short-term political points, even if it robs the country of our opportunity to solve a long-term challenge. And out of this blizzard of charges and counter-charges, confusion has reigned. Well, the time for bickering is over. The time for games has passed. (APPLAUSE)
American people	Now is the season for action. Now is when we must bring the best ideas of both parties together and show the American people that we can still do what we were sent here to do. (APPLAUSE) OBAMA: Now's the time to deliver on health care. (APPLAUSE) Now's the time to deliver on health care.
Goals	The plan I'm announcing tonight would meet three basic goals . It will provide more security and stability to those who have health insurance. It will provide insurance for those who don't. And it will slow the growth of health care costs for our families,

	<p>our businesses, and our government. (APPLAUSE)</p> <p>It's a plan that asks everyone to take responsibility for meeting this challenge -- not just government, not just insurance companies, but everybody, including employers and individuals.</p> <p>And it's a plan that incorporates ideas from senators and congressmen; from Democrats and Republicans, and yes, from some of my opponents in both the primary and general election.</p>
Details	Here are the details that every American needs to know about this plan.
Status quo.	<p>First, if you are among the hundreds of millions of Americans who already have health insurance through your job, or Medicare, or Medicaid, or the V.A., nothing in this plan will require you or your employer to change the coverage or the doctor you have. (APPLAUSE)</p> <p>Let me -- let me repeat this: nothing in our plan requires you to change what you have.</p>
Preexisting condition	<p>What this plan will do is make the insurance you have work better for you. Under this plan, it will be against the law for insurance companies to deny you coverage because of a preexisting condition. (APPLAUSE) OBAMA: As soon as I sign this bill, it will be against the law for insurance companies to drop your coverage when you get sick or water it down when you need it the most. (APPLAUSE) They will no longer be able to place some arbitrary cap on the amount of coverage you can receive in a given year or in a lifetime. (APPLAUSE)</p>
Limit on out-of-pocket expenses	<p>We will place a limit on how much you can be charged for out-of-pocket expenses, because in the United States of America, no one should go broke because they get sick. (APPLAUSE)</p>

Preventive care	<p>And insurance companies will be required to cover, with no extra charge, routine checkups and preventive care, like mammograms and colonoscopies. (APPLAUSE) Because there's no reason we shouldn't be catching diseases like breast cancer and colon cancer before they get worse. OBAMA: That makes sense. It saves money, and it saves lives. (APPLAUSE)</p> <p>That's what Americans who have health insurance can expect from this plan: more security and more stability.</p>
Uninsured	<p>Now, if you're one of the tens of millions of Americans who don't currently have health insurance, the second part of this plan will finally offer you quality, affordable choices. If you... (APPLAUSE)</p>
New insurance exchange	<p>... if you lose your job or you change your job, you'll be able to get coverage. If you strike out on your own and start a small business, you'll be able to get coverage. We'll do this by creating a new insurance exchange, a marketplace where individuals and small businesses will be able to shop for health insurance at competitive prices.</p> <p>Insurance companies will have an incentive to participate in this exchange because it lets them compete for millions of new customers. As one big group, these customers will have greater leverage to bargain with the insurance companies for better prices and quality coverage. This is how large companies and government employees get affordable insurance. It's how everyone in this Congress gets affordable insurance. And it's time to give every American the same opportunity that we give ourselves. (APPLAUSE)</p>
Tax credits	<p>Now, for those individuals and small businesses who still can't afford the lower-priced insurance available in the exchange, we'll provide tax credits, the size of which will be based on your need.</p>
Consumer	<p>OBAMA: And all insurance companies that want access to this</p>

protections	new marketplace will have to abide by the consumer protections I already mentioned.
Low-cost coverage	This exchange will take effect in four years, which will give us time to do it right. In the meantime, for those Americans who can't get insurance today because they have preexisting medical conditions, we will immediately offer low-cost coverage that will protect you against financial ruin if you become seriously ill. (APPLAUSE)
McCain	This was a good idea when Senator John McCain proposed it in the campaign; it's a good idea now, and we should all embrace it. (APPLAUSE)
Affordable options	Now, even if we provide these affordable options , there may be those, and especially the young and the healthy, who still want to take the risk and go without coverage. There may still be companies that refuse to do right by their workers by giving them coverage.
Irresponsible behaviour. Free riders	<p>The problem is, such irresponsible behavior costs all the rest of us money. If there are affordable options and people still don't sign up for health insurance, it means we pay for these people's expensive emergency room visits.</p> <p>If some businesses don't provide workers health care, it forces the rest of us to pick up the tab when their workers get sick, and gives those businesses an unfair advantage over their competitors.</p> <p>And unless everybody does their part, many of the insurance reforms we seek, especially requiring insurance companies to cover preexisting conditions, just can't be achieved.</p>
Auto insurance	<p>OBAMA: That's why under my plan, individuals will be required to carry basic health insurance -- just as most states require you to carry auto insurance. (APPLAUSE)</p> <p>Likewise -- likewise, businesses will be required to either offer their workers health care, or chip in to help cover the cost of their workers.</p>

Hardship cover	There will be a hardship waiver for those individuals who still can't afford coverage, and 95 percent of all small businesses, because of their size and narrow profit margin, would be exempt from these requirements.
Universal	But... (APPLAUSE) But we can't have large businesses and individuals who can afford coverage game the system by avoiding responsibility to themselves or their employees. OBAMA: Improving our health care system only works if everybody does their part . And while there remains some significant details to be ironed out, I believe... (LAUGHTER)
Summary	... I believe a broad consensus exists for the aspects of the plan I just outlined: consumer protections for those with insurance; an exchange that allows individuals and small businesses to purchase affordable coverage; and a requirement that people who can afford insurance get insurance.
AE	And I have no doubt that these reforms would greatly benefit Americans from all walks of life , as well as the economy as a whole.
Key controversies	Still, given all the misinformation that's been spread over the past few months, I realize -- I realize that many Americans have grown nervous about reform. So tonight, I want to address some of the key controversies that are still out there.
Bogus claim	Some of people's concerns have grown out of bogus claims spread by those whose only agenda is to kill reform at any cost. The best example is the claim, made not just by radio and cable talk show hosts, but by prominent politicians that we plan to set up panels of bureaucrats with the power to kill off senior citizens . Now, such a charge would be laughable if it weren't so cynical and irresponsible. It is a lie plain and simple. (APPLAUSE)
Insure illegal immigrants	OBAMA: Now... (APPLAUSE) Now, there are also those who claim that our reform efforts

	<p>would insure illegal immigrants. This, too, is false. The reforms -- the reforms I'm proposing would not apply to those who are here illegally.</p> <p>(UNKNOWN): That's a lie.</p> <p>(AUDIENCE BOOING) (ph)</p> <p>OBAMA: That's not true.</p>
Fund abortions	<p>And one more misunderstanding I want to clear up: under our plan, no federal dollars will be used to fund abortions, and federal conscience laws will remain in place. (APPLAUSE)</p>
AE – government takeover	<p>Now, my health care proposal has also been attacked by some who oppose reform as a "government takeover" of the entire health care system.</p> <p>Now, as proof, critics point to a provision in our plan that allows the uninsured and small businesses to choose a publicly-sponsored insurance option, administered by the government, just like Medicaid or Medicare.</p> <p>So let me set the record straight here.</p>
Choice and competition	<p>OBAMA: My guiding principle is, and always has been, that consumers do better when there's choice and competition. That's how the market works. (APPLAUSE)</p> <p>Unfortunately, in 34 states, 75 percent of the insurance market is controlled by five or fewer companies. In Alabama, almost 90 percent is controlled by just one company.</p> <p>And without competition, the price of insurance goes up and quality goes down. And it makes it easier for insurance companies to treat their customers badly -- by cherry-picking the healthiest individuals and trying to drop the sickest; by overcharging small businesses who have no leverage; and by jacking up rates.</p>
Insurance	<p>Insurance executives don't do this because they're bad people. They do it because it's profitable. As one former insurance executive testified before Congress, insurance companies are not only encouraged to find reasons to drop the</p>

	<p>seriously ill, they are rewarded for it.</p> <p>All of this is in service of meeting what this former executive called "Wall Street's relentless profit expectations."</p>
Accountability	<p>Now, I have no interest in putting insurance companies out of business. They provide a legitimate service and employ a lot of our friends and neighbors. I just want to hold them accountable. (APPLAUSE)</p>
Public option	<p>OBAMA: And the insurance reforms that I've already mentioned would do just that, but an additional step we can take to keep insurance companies honest is by making a not-for-profit public option available in the insurance exchange. (APPLAUSE)</p> <p>Now, let me -- let me be clear. (APPLAUSE)</p> <p>Let me be clear, it would only be an option for those who don't have insurance. No one would be forced to choose it and it would not impact those of you who already have insurance. In fact, based on Congressional Budget Office estimates, we believe that less than 5 percent of Americans would sign up.</p> <p>Despite all this, the insurance companies and their allies don't like this idea. They argue that these private companies can't fairly compete with the government, and they'd be right if taxpayers were subsidizing this public insurance option, but they won't be. I've insisted that, like any private insurance company, the public insurance option would have to be self-sufficient and rely on the premiums its collects.</p> <p>But by avoiding some of the overhead that gets eaten up at private companies by profits and excessive administrative costs and executive salaries, it could provide a good deal for consumers and would also keep pressure on private insurers to keep their policies affordable and treat their customers better, the same way public colleges and universities provide additional choice and competition to students without in any way inhibiting a vibrant system of private colleges and</p>

	<p>universities.</p> <p>OBAMA: Now, it is... (APPLAUSE) It's -- it's worth noting that a strong majority of Americans still favor a public insurance option of the sort I've proposed tonight. But its impact shouldn't be exaggerated by the left or the right or the media. It is only one part of my plan, and shouldn't be used as a handy excuse for the usual Washington ideological battles.</p> <p>To my progressive friends, I would remind you that for decades, the driving idea behind reform has been to end insurance company abuses and make coverage available for those without it. (APPLAUSE)</p> <p>The public option -- the public option is only a means to that end, and we should remain open to other ideas that accomplish our ultimate goal.</p>
Government takeover	<p>And to my Republican friends, I say that rather than making wild claims about a government takeover of health care, we should work together to address any legitimate concerns you may have. (APPLAUSE)</p>
Suggestions	<p>OBAMA: For example -- for example, some have suggested that the public option go into effect only in those markets where insurance companies are not providing affordable policies. Others have proposed a co-op or another non-profit entity to administer the plan.</p>
Affordability	<p>These are all constructive ideas worth exploring. But I will not back down on the basic principle that, if Americans can't find affordable coverage, we will provide you with a choice. (APPLAUSE)</p> <p>And -- and I will make sure that no government bureaucrat or insurance company bureaucrat gets between you and the care that you need. (APPLAUSE)</p>
How we pay for this plan.	<p>Finally, let me discuss an issue that is a great concern to me, to members of this chamber, and to the public, and that's how we pay for this plan.</p>

Deficit	<p>Now, Here's what you need to know. First, I will not sign a plan that adds one dime to our deficits, either now or in the future. (APPLAUSE)</p> <p>I will not sign it if it adds one dime to the deficit now or in the future -- period. (APPLAUSE)</p> <p>OBAMA: I will not sign it if it adds one dime to the deficit now or in the future. Period. And to prove that I'm serious, there will be a provision in this plan that requires us to come forward with more spending cuts if the savings we promise don't materialize. (APPLAUSE)</p> <p>Now, part of the reason I faced a trillion-dollar deficit when I walked in the door of the White House is because too many initiatives over the last decade were not paid for, from the Iraq war to tax breaks for the wealthy. (APPLAUSE)</p> <p>I will not make that same mistake with health care.</p>
Savings	<p>Second, we've estimated that most of this plan can be paid for by finding savings within the existing health care system, a system that is currently full of waste and abuse. Right now, too much of the hard-earned savings and tax dollars we spend on health care don't make us any healthier. That's not my judgment. It's the judgment of medical professionals across this country.</p>
Medicare	<p>And this is also true when it comes to Medicare and Medicaid. In fact, I want to speak directly to seniors for a moment, because Medicare is another issue that's been subjected to demagoguery and distortion during the course of this debate. More than four decades ago, this nation stood up for the principle that after a lifetime of hard work, our seniors should not be left to struggle with a pile of medical bills in their later years.</p> <p>OBAMA: That's how Medicare was born. And it remains a sacred trust that must be passed down from one generation to the next. And that... (APPLAUSE)</p>

That is why not a dollar of the Medicare trust fund will be used to pay for this plan.

The only... (APPLAUSE) The only thing this plan would eliminate is the hundreds of billions of dollars in waste and fraud, as well as unwarranted subsidies in Medicare that go to insurance companies... (APPLAUSE) ... subsidies that do everything to pad their profits, but don't improve the care of seniors.

And we will also create an **independent commission of doctors and medical experts** charged with identifying more waste in the years ahead. (APPLAUSE)

Now, these steps will ensure that you -- America's seniors -- get the benefits you've been promised. They will ensure that Medicare is there for future generations. And we can use some of the savings to fill the gap in coverage that forces too many seniors to pay thousands of dollars a year out of their own pockets for prescription drugs. (APPLAUSE)

That's what this plan will do for you. So don't pay attention to those scary stories about how your benefits will be cut - especially since some of the same folks who are spreading these tall tales have fought against Medicare in the past... (APPLAUSE) ... and just this year supported a budget that would essentially have turned Medicare into a privatized voucher program.

OBAMA: That will not happen on my watch. I will protect Medicare. (APPLAUSE)

Now, because Medicare is such a big part of the health care system, making the program more efficient can help usher in changes in the way we deliver health care that can reduce costs for everybody.

We have long known that some places, like the Intermountain Healthcare in Utah or the Geisinger Health System in rural Pennsylvania, offer high-quality care at costs below average.

Common-sense best practices	<p>So the commission can help encourage the adoption of these common-sense best practices by doctors and medical professionals throughout the system -- everything from reducing hospital infection rates to encouraging better coordination between teams of doctors.</p> <p>Reducing the waste and inefficiency in Medicare and Medicaid will pay for most of this plan. Now, much... (APPLAUSE)</p>
New customers	<p>Much of the rest would be paid for with revenues from the very same drug and insurance companies that stand to benefit from tens of millions of new customers.</p>
Fee	<p>And this reform will charge insurance companies a <i>fee for their most expensive policies</i>, which will encourage them to provide greater value for the money -- an idea which has the support of Democratic and Republican experts.</p> <p>And according to these same experts, this modest change could help hold down the cost of health care for all of us in the long run.</p>
Medical malpractice laws	<p>Now, finally, many in this chamber, particularly on the Republican side of the aisle, have long insisted that reforming our medical malpractice laws can help bring down the costs of health care. (APPLAUSE)</p> <p>Now -- there you go. (APPLAUSE)</p> <p>There you go. (APPLAUSE)</p> <p>Now, I don't believe malpractice reform is a silver bullet, but I've talked to enough doctors to know that defensive medicine may be contributing to unnecessary costs. So -- so -- so I'm proposing that we move forward on a range of ideas about how to put patient safety first and let doctors focus on practicing medicine. I know... (APPLAUSE)</p>
Demonstration projects	<p>... I know that the Bush administration considered authorizing demonstration projects in individual states to test these ideas. I think it's a good idea, and I'm directing my secretary of health and human services to move forward on this initiative</p>

	today. (APPLAUSE)
Costs	<p>Now, add it all up and the plan I'm proposing will cost around \$900 billion over 10 years, less than we have spent on the Iraq and Afghanistan wars and less than the tax cuts for the wealthiest few Americans that Congress passed at the beginning of the previous administration. (APPLAUSE)</p> <p>OBAMA: Now, most of these costs will be paid for with money already being spent -- but spent badly -- in the existing health care system. The plan will not add to our deficit. The middle class will realize greater security, not higher taxes. And if we are able to slow the growth of health care costs by just one-tenth of 1 percent each year -- one-tenth of 1 percent -- it will actually reduce the deficit by \$4 trillion over the long term.</p>
Bypartisan plan	<p>Now, this is the plan I'm proposing. It's a plan that incorporates ideas from many of the people in this room tonight -- Democrats and Republicans. And I will continue to seek common ground in the weeks ahead. If you come to me with a serious set of proposals, I will be there to listen. My door is always open.</p> <p>But know this: I will not waste time with those who have made the calculation that it's better politics to kill this plan than to improve it. (APPLAUSE)</p> <p>I won't stand by while the special interests use the same old tactics to keep things exactly the way they are. If you misrepresent what's in this plan, we will call you out. And I will not...</p> <p>(APPLAUSE) And I will not accept the status quo as a solution. Not this time; not now.</p>
Deficit	<p>OBAMA: Everyone in this room knows what will happen if we do nothing. Our deficit will grow. More families will go bankrupt. More businesses will close. More Americans will lose their coverage when they are sick and need it the most. And more will die as a result.</p>

	We know these things to be true.
AE	That is why we cannot fail. Because there are too many Americans counting on us to succeed -- the ones who suffer silently and the ones who shared their stories with us at town halls, in e-mails, and in letters.
Ted Kennedy	<p>I received one of those letters a few days ago. It was from our beloved friend and colleague, Ted Kennedy. He had written it back in May, shortly after he was told that his illness was terminal. He asked that it be delivered upon his death.</p> <p>In it, he spoke about what a happy time his last months were, thanks to the love and support of family and friends, his wife, Vicki, his amazing children, who are all here tonight.</p>
American Exceptionalism	<p>And he expressed confidence that this would be the year that health care reform -- "that great unfinished business of our society," he called it -- would finally pass.</p> <p>He repeated the truth that health care is decisive for our future prosperity, but he also reminded me that "it concerns more than material things."</p> <p>"What we face," he wrote, "is above all a moral issue; at stake are not just the details of policy but fundamental principles of social justice and the character of our country."</p> <p>One of the unique and wonderful things about America has always been our self-reliance, our rugged individualism, our fierce defense of freedom, and our healthy skepticism of government. And figuring out the appropriate size and role of government has always been a source of rigorous and, yes, sometimes angry debate. That's our history.</p> <p>For some of Ted Kennedy's critics, his brand of liberalism represented an affront to American liberty. In their minds, his passion for universal health care was nothing more than a passion for big government. But those of us who knew Teddy and worked with him here -- people of both parties -- know that what drove him was something more.</p>

	<p>His friend, Orrin Hatch, he knows that. They worked together to provide children with health insurance. His friend, John McCain, knows that. They worked together on a patients' bill of rights. His friend, Chuck Grassley, knows that. They worked together to provide health care to children with disabilities.</p> <p>On issues like these, Ted Kennedy's passion was born not of some rigid ideology, but of his own experience -- the experience of having two children stricken with cancer.</p>
Affordability	<p>OBAMA: He never forgot the sheer terror and helplessness that any parent feels when a child is badly sick. And he was able to imagine what it must be like for those without insurance, what it'd be like to have to say to a wife or a child or an aging parent, "There is something that could make you better, but I just can't afford it."</p>
American Exceptionalism	<p>That large-heartedness, that concern and regard for the plight of others is not a partisan feeling. It's not a Republican or a Democratic feeling. It, too, is part of the American character. Our ability to stand in other people's shoes. A recognition that we are all in this together, that when fortune turns against one of us, others are there to lend a helping hand. A belief that in this country, hard work and responsibility should be rewarded by some measure of security and fair play. And an acknowledgement that sometimes government has to step in to help deliver on that promise.</p> <p>This has always been the history of our progress.</p>
History	<p>In 1935, when over half of our seniors could not support themselves and millions had seen their savings wiped away, there were those who argued that Social Security would lead to socialism. But the men and women of Congress stood fast, and we are all the better for it.</p> <p>In 1965, when some argued that Medicare represented a government takeover of health care, members of Congress,</p>

	<p>Democrats and Republicans, did not back down.</p> <p>OBAMA: They joined together so that all of us could enter our golden years with some basic peace of mind.</p>
Government	<p>You see, our predecessors understood that government could not, and should not, solve every problem. They understood that there are instances when the gains in security from government action are not worth the added constraints on our freedom.</p> <p>But they also understood that the danger of too much government is matched by the perils of too little; that without the leavening hand of wise policy, markets can crash, monopolies can stifle competition, the vulnerable can be exploited.</p> <p>And they knew that when any government measure, no matter how carefully crafted or beneficial, is subject to scorn; when any efforts to help people in need are attacked as un-American; when facts and reason are thrown overboard and only timidity passes for wisdom, and we can no longer even engage in a civil conversation with each other over the things that truly matter -- that at that point we don't merely lose our capacity to solve big challenges. We lose something essential about ourselves.</p> <p>That was true then. It remains true today.</p> <p>I understand how difficult this health care debate has been. I know that many in this country are deeply skeptical that government is looking out for them. I understand that the politically safe move would be to kick the can further down the road, to defer reform one more year, or one more election, or one more term.</p> <p>But that is not what this moment calls for.</p>
American Exceptionalism	<p>OBAMA: That's not what we came here to do. We did not come to fear the future. We came here to shape it. I still believe we can act even when it's hard. (APPLAUSE) I still</p>

	<p>believe... (APPLAUSE)... I still believe that we can act when it's hard. I still believe we can replace acrimony with civility and gridlock with progress. I still believe we can do great things and that here and now we will meet history's test, because that's who we are. That is our calling. That is our character.</p> <p>Thank you. God bless you and may God bless the United States of America. END</p>
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DECEMBER 24, 2009 – WASHINGTON, D.C. REMARKS BY THE PRESIDENT ON SENATE PASSAGE OF HEALTH INSURANCE REFORM. STATE DINING ROOM. 8:47 A.M. EST	
Historical moment.	<p>THE PRESIDENT: Good morning, everybody. In a historic vote that took place this morning members of the Senate joined their colleagues in the House of Representatives to pass a landmark health insurance reform package -- legislation that brings us toward the end of a nearly century-long struggle to reform America's health care system.</p>
History	<p>Ever since Teddy Roosevelt first called for reform in 1912, seven Presidents -- Democrats and Republicans alike -- have taken up the cause of reform. Time and time again, such efforts have been blocked by special interest lobbyists who've perpetuated a status quo that works better for the insurance industry than it does for the American people. But with passage of reform bills in both the House and the Senate, we are now finally poised to deliver on the promise of real, meaningful health insurance reform that will bring additional security and stability to the American people.</p>
Insurance industry	<p>The reform bill that passed the Senate this morning, like the House bill, includes the toughest measures ever taken to hold the insurance industry accountable. Insurance companies will no longer be able to deny you coverage on the basis of a</p>

	<p>preexisting condition. They will no longer be able to drop your coverage when you get sick. No longer will you have to pay unlimited amounts out of your own pocket for the treatments you need. And you'll be able to appeal unfair decisions by insurance companies to an independent party.</p>
Benefits	<p>If this legislation becomes law, workers won't have to worry about losing coverage if they lose or change jobs. Families will save on their premiums. Businesses that would see their costs rise if we do not act will save money now, and they will save money in the future. This bill will strengthen Medicare, and extend the life of the program. It will make coverage affordable for over 30 million Americans who do not have it -- 30 million Americans. And because it is paid for and curbs the waste and inefficiency in our health care system, this bill will help reduce our deficit by as much as \$1.3 trillion in the coming decades, making it the largest deficit reduction plan in over a decade.</p>
History	<p>As I've said before, these are not small reforms; these are big reforms. If passed, this will be the most important piece of social policy since the Social Security Act in the 1930s, and the most important reform of our health care system since Medicare passed in the 1960s. And what makes it so important is not just its cost savings or its deficit reductions. It's the impact reform will have on Americans who no longer have to go without a checkup or prescriptions that they need because they can't afford them; on families who no longer have to worry that a single illness will send them into financial ruin; and on businesses that will no longer face exorbitant insurance rates that hamper their competitiveness. It's the difference reform will make in the lives of the American people.</p> <p>I want to commend Senator Harry Reid, extraordinary work that he did; Speaker Pelosi for her extraordinary leadership and dedication. Having passed reform bills in both the House</p>

	and the Senate, we now have to take up the last and most important step and reach an agreement on a final reform bill that I can sign into law. And I look forward to working with members of Congress in both chambers over the coming weeks to do exactly that.
American exceptionalism	<p>With today's vote, we are now incredibly close to making health insurance reform a reality in this country. Our challenge, then, is to finish the job. We can't doom another generation of Americans to soaring costs and eroding coverage and exploding deficits. Instead we need to do what we were sent here to do and improve the lives of the people we serve. For the sake of our citizens, our economy, and our future, let's make 2010 the year we finally reform health care in the United States of America.</p> <p>Everybody, Merry Christmas, Happy New Year.</p> <p>Q Do you have a holiday wish for the troops?</p> <p>THE PRESIDENT: I do, and I will be actually -- I'm on my way right now to call a few of them and wish them Merry Christmas and to thank them for their extraordinary service as they're posted in Iraq and Afghanistan. END – 8:52 A.M. EST</p>

MARCH 21, 2010 - WASHINGTON, D.C. – OBAMA MAKES REMARKS AFTER HOUSE PASSES HEALTH-CARE LEGISLATION. EAST ROOM. WHITE HOUSE.

History	<p>THE PRESIDENT: Good evening, everybody. Tonight, after nearly 100 years of talk and frustration, after decades of trying, and a year of sustained effort and debate, the United States Congress finally declared that America's workers and America's families and America's small businesses deserve the security of knowing that here, in this country, neither illness nor accident should endanger the dreams they've worked a lifetime to achieve.</p>
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<p>American exceptionalism . Government.</p>	<p>Tonight, at a time when the pundits said it was no longer possible, we rose above the weight of our politics. We pushed back on the undue influence of special interests. We didn't give in to mistrust or to cynicism or to fear. Instead, we proved that we are still a people capable of doing big things and tackling our biggest challenges. We proved that this government -- a government of the people and by the people -- still works for the people.</p>
<p>Thanks.</p>	<p>I want to thank every member of Congress who stood up tonight with courage and conviction to make health care reform a reality. And I know this wasn't an easy vote for a lot of people. But it was the right vote. I want to thank Speaker Nancy Pelosi for her extraordinary leadership, and Majority Leader Steny Hoyer and Majority Whip Jim Clyburn for their commitment to getting the job done. I want to thank my outstanding Vice President, Joe Biden, and my wonderful Secretary of Health and Human Services, Kathleen Sebelius, for their fantastic work on this issue. I want to thank the many staffers in Congress, and my own incredible staff in the White House, who have worked tirelessly over the past year with Americans of all walks of life to forge a reform package finally worthy of the people we were sent here to serve.</p> <p>Today's vote answers the dreams of so many who have fought for this reform. To every unsung American who took the time to sit down and write a letter or type out an e-mail hoping your voice would be heard -- it has been heard tonight. To the untold numbers who knocked on doors and made phone calls, who organized and mobilized out of a firm conviction that change in this country comes not from the top down, but from the bottom up -- let me reaffirm that conviction: This moment is possible because of you.</p>
<p>Religion</p>	<p>Most importantly, today's vote answers the prayers of every American who has hoped deeply for something to be done</p>

	<p>about a health care system that works for insurance companies, but not for ordinary people. For most Americans, this debate has never been about abstractions, the fight between right and left, Republican and Democrat -- it's always been about something far more personal. It's about every American who knows the shock of opening an envelope to see that their premiums just shot up again when times are already tough enough. It's about every parent who knows the desperation of trying to cover a child with a chronic illness only to be told "no" again and again and again. It's about every small business owner forced to choose between insuring employees and staying open for business. They are why we committed ourselves to this cause.</p>
<p>American exceptionalism . Government.</p>	<p>Tonight's vote is not a victory for any one party -- it's a victory for them. It's a victory for the American people. And it's a victory for common sense.</p> <p>Now, it probably goes without saying that tonight's vote will give rise to a frenzy of instant analysis. There will be tallies of Washington winners and losers, predictions about what it means for Democrats and Republicans, for my poll numbers, for my administration. But long after the debate fades away and the prognostication fades away and the dust settles, what will remain standing is not the government-run system some feared, or the status quo that serves the interests of the insurance industry, but a health care system that incorporates ideas from both parties -- a system that works better for the American people.</p>
<p>Excesses and abuses of the insurance industry</p>	<p>If you have health insurance, this reform just gave you more control by reining in the worst excesses and abuses of the insurance industry with some of the toughest consumer protections this country has ever known -- so that you are actually getting what you pay for.</p>
<p>Free Riders</p>	<p>If you don't have insurance, this reform gives you a chance to</p>

	<p>be a part of a big purchasing pool that will give you choice and competition and cheaper prices for insurance. And it includes the largest health care tax cut for working families and small businesses in history -- so that if you lose your job and you change jobs, start that new business, you'll finally be able to purchase quality, affordable care and the security and peace of mind that comes with it.</p>
Medicare	<p>This reform is the right thing to do for our seniors. It makes Medicare stronger and more solvent, extending its life by almost a decade. And it's the right thing to do for our future. It will reduce our deficit by more than \$100 billion over the next decade, and more than \$1 trillion in the decade after that.</p>
Change	<p>So this isn't radical reform. But it is major reform. This legislation will not fix everything that ails our health care system. But it moves us decisively in the right direction. This is what change looks like.</p>
Senate	<p>Now as momentous as this day is, it's not the end of this journey. On Tuesday, the Senate will take up revisions to this legislation that the House has embraced, and these are revisions that have strengthened this law and removed provisions that had no place in it. Some have predicted another siege of parliamentary maneuvering in order to delay adoption of these improvements. I hope that's not the case. It's time to bring this debate to a close and begin the hard work of implementing this reform properly on behalf of the American people. This year, and in years to come, we have a solemn responsibility to do it right.</p>
American exceptionalism	<p>Nor does this day represent the end of the work that faces our country. The work of revitalizing our economy goes on. The work of promoting private sector job creation goes on. The work of putting American families' dreams back within reach goes on. And we march on, with renewed confidence, energized by this victory on their behalf.</p>

	<p>In the end, what this day represents is another stone firmly laid in the foundation of the American Dream. Tonight, we answered the call of history as so many generations of Americans have before us. When faced with crisis, we did not shrink from our challenge -- we overcame it. We did not avoid our responsibility -- we embraced it. We did not fear our future -- we shaped it.</p> <p>Thank you, God bless you, and may God bless the United States of America. END</p>
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MARCH 23RD, 2010 – WASHINGTON, D.C. REMARKS BY THE PRESIDENT AND VICE PRESIDENT AT SIGNING OF THE HEALTH INSURANCE REFORM BILL. EAST ROOM. 11:29 A.M. EDT	
American exceptionalism	<p>THE VICE PRESIDENT: Thank you all. (Applause.)</p> <p>AUDIENCE: Fired up! Ready to go! Fired up! Ready to go!</p> <p>THE VICE PRESIDENT: Thank you.</p> <p>Mr. President, I think we got a happy room here. (Laughter.)</p> <p>It seems ridiculous to say thank you all for being here. (Laughter.) Ladies and gentlemen, to state the obvious, this is a historic day. (Applause.)</p>
This is a historic day	<p>In our business you use that phrase a lot, but I can't think of a day in the 37 years that I've been a United States senator and the short time I've been Vice President that it is more appropriately stated. This is a historic day.</p>
History is made	<p>And history -- history is not merely what is printed in textbooks. It doesn't begin or end with the stroke of a pen. History is made. History is made when men and women decide that there is a greater risk in accepting a situation that we cannot bear than in steeling our spine and embracing the promise of change. That's when history is made. (Applause.)</p>
Tens of millions of Americans	<p>History is made when you all assembled here today, members of Congress, take charge to change the lives of tens of</p>

	millions of Americans. Through the efforts of those of us lucky enough to serve here in this town, that's exactly what you've done. You've made history.
Different course	<p>History is made when a leader steps up, stays true to his values, and charts a fundamentally different course for the country. History is made when a leader's passion -- passion - - is matched with principle to set a new course. Well, ladies and gentlemen, Mr. President, you are that leader. (Applause.)</p> <p>Mr. President, your fierce advocacy, the clarity of purpose that you showed, your perseverance -- these are in fact -- it is not hyperbole to say -- these are the reasons why we're assembled in this room together, today. But for those attributes we would not be here. Many, many men and women are going to feel the pride that I feel in watching you shortly, watching you sign this bill, knowing that their work -- their work has helped make this day possible. But, Mr. President, you're the guy that made it happen. (Applause.)</p>
Teddy Roosevelt	And so, Mr. President, all of us, press and elected officials, assembled in this town over the years, we've seen some incredible things happen. But you know, Mr. President, you've done what generations of not just ordinary, but great men and women, have attempted to do. Republicans as well as Democrats, they've tried before. Everybody knows the story, starting with Teddy Roosevelt . They've tried. They were real bold leaders.
The right...	But, Mr. President, they fell short. You have turned, Mr. President, the right of every American to have access to decent health care into reality for the first time in American history. (Applause.)
Social network Access to good health	Mr. President, I've gotten to know you well enough. You want me to stop because I'm embarrassing you. (Laughter.) But I'm not going to stop for another minute, Mr. President,

	because you delivered on a promise -- a promise you made to all Americans when we moved into this building.
	Mr. President, you are -- to repeat myself -- literally about to make history. Our children and our grandchildren, they're going to grow up knowing that a man named Barack Obama put the final girder in the framework for a social network in this country to provide the single most important element of what people need -- and that is access to good health -- (applause) -- and that every American from this day forward will be treated with simple fairness and basic justice.
The greatest wealth is health	Look, the classic poet, Virgil, once said that " The greatest wealth is health. " The greatest wealth is health. Well, today, America becomes a whole lot wealthier because tens of millions of Americans will be a whole lot healthier from this moment on.
History	<p>Ladies and gentlemen, the President of the United States of America, Barack Obama. (Applause.)</p> <p>THE PRESIDENT: Thank you, everybody. Thank you. (Applause.) Thank you. Thank you, everybody. Thank you. Thank you everybody. Thank you so much. Thank you. Thank you. (Applause.) Thank you, everybody. Please, have a seat.</p> <p>Thank you, Joe. (Laughter.)</p> <p>THE VICE PRESIDENT: Good to be with you, Mr. President. (Laughter.)</p> <p>THE PRESIDENT: Today, after almost a century of trying; today, after over a year of debate; today, after all the votes have been tallied -- health insurance reform becomes law in the United States of America. (Applause.) Today.</p> <p>It is fitting that Congress passed this historic legislation this week. For as we mark the turning of spring, we also mark a new season in America. In a few moments, when I sign this bill, all of the overheated rhetoric over reform will finally</p>

	confront the reality of reform. (Applause.)
	And while the Senate still has a last round of improvements to make on this historic legislation -- and these are improvements I'm confident they will make swiftly -- (applause) -- the bill I'm signing will set in motion reforms that generations of Americans have fought for, and marched for, and hungered to see.
Four years to implement	It will take four years to implement fully many of these reforms, because we need to implement them responsibly. We need to get this right. But a host of desperately needed reforms will take effect right away. (Applause.)
Tax credits	This year, we'll start offering tax credits to about 4 million small businessmen and women to help them cover the cost of insurance for their employees. (Applause.) That happens this year.
Preexisting conditions	This year, tens of thousands of uninsured Americans with preexisting conditions , the parents of children who have a preexisting condition, will finally be able to purchase the coverage they need. That happens this year. (Applause.)
Drop people's coverage	This year, insurance companies will no longer be able to drop people's coverage when they get sick. (Applause.) They won't be able to place lifetime limits or restrictive annual limits on the amount of care they can receive. (Applause.)
Free preventive care. 26 years old	This year, all new insurance plans will be required to offer free preventive care . And this year, young adults will be able to stay on their parents' policies until they're 26 years old . That happens this year. (Applause.)
Doughnut hole	And this year, seniors who fall in the coverage gap known as the doughnut hole will start getting some help. They'll receive \$250 to help pay for prescriptions, and that will, over time, fill in the doughnut hole. And I want seniors to know, despite what some have said, these reforms will not cut your guaranteed benefits. (Applause.) In fact, under this law,

	Americans on Medicare will receive free preventive care without co-payments or deductibles. That begins this year. (Applause.)
Health insurance exchanges - the largest middle-class tax cut for health care in history	Once this reform is implemented, health insurance exchanges will be created, a competitive marketplace where uninsured people and small businesses will finally be able to purchase affordable, quality insurance. They will be able to be part of a big pool and get the same good deal that members of Congress get. That's what's going to happen under this reform. (Applause.) And when this exchange is up and running, millions of people will get tax breaks to help them afford coverage, which represents the largest middle-class tax cut for health care in history . That's what this reform is about. (Applause.)
Reducing our deficit	This legislation will also lower costs for families and for businesses and for the federal government, reducing our deficit by over \$1 trillion in the next two decades. It is paid for. It is fiscally responsible. And it will help lift a decades-long drag on our economy. That's part of what all of you together worked on and made happen. (Applause.)
American Exceptionalism	That our generation is able to succeed in passing this reform is a testament to the persistence -- and the character -- of the American people , who championed this cause; who mobilized; who organized; who believed that people who love this country can change it. It's also a testament to the historic leadership -- and uncommon courage -- of the men and women of the United States Congress, who've taken their lumps during this difficult debate. (Laughter.) AUDIENCE MEMBER: Yes, we did. (Laughter.)
Legislative chambers	THE PRESIDENT: You know, there are few tougher jobs in politics or government than leading one of our legislative chambers . In each chamber, there are men and women who

	come from different places and face different pressures, who reach different conclusions about the same things and feel deeply concerned about different things.
Dreams of all people	By necessity, leaders have to speak to those different concerns. It isn't always tidy; it is almost never easy. But perhaps the greatest -- and most difficult -- challenge is to cobble together out of those differences the sense of common interest and common purpose that's required to advance the dreams of all people -- especially in a country as large and diverse as ours.
Pelosi	And we are blessed by leaders in each chamber who not only do their jobs very well but who never lost sight of that larger mission. They didn't play for the short term; they didn't play to the polls or to politics: One of the best speakers the House of Representatives has ever had, Speaker Nancy Pelosi. (Applause.) AUDIENCE: Nancy! Nancy! Nancy! Nancy!
Harry Reid	THE PRESIDENT: One of the best majority leaders the Senate has ever had, Mr. Harry Reid. (Applause.)
American Excepcionalism	To all of the terrific committee chairs, all the members of Congress who did what was difficult, but did what was right, and passed health care reform -- not just this generation of Americans will thank you, but the next generation of Americans will thank you.
Sebelius and DeParle	And of course, this victory was also made possible by the painstaking work of members of this administration, including our outstanding Secretary of Health and Human Services, Kathleen Sebelius -- (applause) -- and one of the unsung heroes of this effort, an extraordinary woman who led the reform effort from the White House, Nancy-Ann DeParle . Where's Nancy? (Applause.)
On behalf of my mother	Today, I'm signing this reform bill into law on behalf of my mother , who argued with insurance companies even as she

	battled cancer in her final days.
For Ryan Smith	I'm signing it for Ryan Smith , who's here today. He runs a small business with five employees. He's trying to do the right thing, paying half the cost of coverage for his workers. This bill will help him afford that coverage.
For Marcelas Owens	I'm signing it for 11-year-old Marcelas Owens , who's also here. (Applause.) Marcelas lost his mom to an illness. And she didn't have insurance and couldn't afford the care that she needed. So in her memory he has told her story across America so that no other children have to go through what his family has experienced. (Applause.)
For Natoma Canfield	I'm signing it for Natoma Canfield . Natoma had to give up her health coverage after her rates were jacked up by more than 40 percent. She was terrified that an illness would mean she'd lose the house that her parents built, so she gave up her insurance. Now she's lying in a hospital bed, as we speak, faced with just such an illness, praying that she can somehow afford to get well without insurance. Natoma's family is here today because Natoma can't be. And her sister Connie is here. Connie, stand up. (Applause.)
For all the leaders	<p>I'm signing this bill for all the leaders who took up this cause through the generations -- from Teddy Roosevelt to Franklin Roosevelt, from Harry Truman, to Lyndon Johnson, from Bill and Hillary Clinton, to one of the deans who's been fighting this so long, John Dingell. (Applause.) To Senator Ted Kennedy. (Applause.) And it's fitting that Ted's widow, Vicki, is here -- it's fitting that Teddy's widow, Vicki, is here; and his niece Caroline; his son Patrick, whose vote helped make this reform a reality. (Applause.)</p> <p>I remember seeing Ted walk through that door in a summit in this room a year ago -- one of his last public appearances. And it was hard for him to make it. But he was confident that we would do the right thing.</p>

Sense of cynicism	Our presence here today is remarkable and improbable. With all the punditry, all of the lobbying, all of the game-playing that passes for governing in Washington, it's been easy at times to doubt our ability to do such a big thing, such a complicated thing; to wonder if there are limits to what we, as a people, can still achieve. It's easy to succumb to the sense of cynicism about what's possible in this country.
American Exceptionalism	<p>But today, we are affirming that essential truth -- a truth every generation is called to rediscover for itself -- that we are not a nation that scales back its aspirations. (Applause.) We are not a nation that falls prey to doubt or mistrust. We don't fall prey to fear. We are not a nation that does what's easy. That's not who we are. That's not how we got here.</p> <p>We are a nation that faces its challenges and accepts its responsibilities. We are a nation that does what is hard. What is necessary. What is right. Here, in this country, we shape our own destiny. That is what we do. That is who we are. That is what makes us the United States of America.</p>
Basic security	And we have now just enshrined, as soon as I sign this bill, the core principle that everybody should have some basic security when it comes to their health care. (Applause.) And it is an extraordinary achievement that has happened because of all of you and all the advocates all across the country.
American exceptionalism	<p>So, thank you. Thank you. God bless you, and may God bless the United States. (Applause.) Thank you. Thank you.</p> <p>All right, I would now like to call up to stage some of the members of Congress who helped make this day possible, and some of the Americans who will benefit from these reforms. And we're going to sign this bill. This is going to take a little while. I've got to use every pen, so it's going to take a</p>

	really long time. (Laughter.) I didn't practice. (Laughter.) (The bill is signed.) We are done. (Applause.) END – 11:56 A.M. EDT
Change	This legislation will not fix everything that ails our health care system. But it moves us decisively in the right direction. This is what change looks like.”

SEPTEMBER 21 ST , 2010. OBAMA HOLDS TELECONFERENCE ON THE AFFORDABLE CARE ACT.	
Introduction	<p>OPERATOR: Good afternoon. This is the operator, Lora Pearl (ph), and I'd like to welcome you to this Health Care call for Faith and Community Leaders.</p> <p>This conference call is sponsored by the Department of Health and Human Services and the White House. I would like to remind all participants they are in listen-only mode for the duration of the call.</p> <p>I will now turn the call over to Joshua DuBois, executive director of the White House Office for Faith-Based and Neighborhood Partnerships.</p>
Joshua DuBois	<p>DUBOIS: Well, thank you so much, and good afternoon, everyone. I'm excited to join you on this call. As was said, my name is Joshua DuBois, and I head up the Office of Faith-Based and Neighborhood Partnerships in the White House. And I want to welcome you to this national conference call, sponsored by the Department of Health and Human Services, with community-based and faith-based leaders and other friends from all across the country.</p>
American exceptionalism	<p>We have folks calling in from every corner of our great land, to talk about the health of our communities, and how we can work together to</p>

	make sure to take advantage of every benefit that health reform has to offer. So this is a really exciting moment. And I'm very glad you're joining us.
Anniversary PPACA New protections	As you're going to hear on this call, September 23rd is a big day -- not just for us here in Washington, but for folks around the country. The 23rd is the six-month anniversary of the passage of the Affordable Care Act. And on that day, a number of new protections for you and for your family will begin to apply.
Benefits	You need to know about those methods. And you're going to hear about them today, and I hope you'll spread the word to others in your communities, your congregations, and your families. We also have some great speakers, including the president himself, who are going to describe those benefits to you, and empower you with the information to tell others.
Nancy-Ann DEPARLE	<p>One of those speakers is my good friend, and one of the -- our greatest champions for health care for American families -- and that's Nancy-Ann DeParle, who heads up the White House Office of Health Reform.</p> <p>Nancy-Ann is going to say a few words, and then we'll pass it off to our emcee for the day, who is going to describe the rest of the call.</p> <p>Nancy-Ann?</p> <p>DEPARLE: Thanks, Josh.</p> <p>I'm Nancy-Ann DeParle, and, hello, friends. On behalf of this administration, I want to thank all of you for joining us.</p>
Protections in health reform	I know the importance of community and faith-based organizations in creating a culture of health and

	<p>wellness, so I'm really excited to be on the line with all of you today. We've joined the call not just here for the president, but, most importantly, to make sure that you know what the protections in health reform mean for you, your families, and folks in your community.</p>
PPACA already making a difference.	<p>And I have to say I know that some of you have been doing that work, because I was in church myself last Sunday, and someone came up to me and said, "Oh, I think it's wonderful that I can now keep my child on my plan. My son just graduated from college, and I've been worried about where he was going to get health insurance. And, now, I know I can keep him on."</p>
Benefits of the law.	<p>So I know some of you have been doing this important work of helping to -- to educate the American people about the benefits of the law. So we'll hear a lot more about that today.</p>
People back in control of their health insurance	<p>We have not only the president on this call, but Secretary Sebelius, our great secretary of Health and Human Services, as well as all of you faith leaders from around the country. And we're all here because we want to put people back in control of their health insurance. And that's exactly what we'll be discussing today.</p>
Prevention	<p>So, again, I want to thank you all for the things that you're doing to serve families around the country, and ensure the health of our communities as we try to change the paradigm from health insurance that maybe is there to help you if you get sick, to health insurance that is there to help prevent you from getting sick. That's a very different paradigm than the one we've had in the past.</p>

	<p>With that, I'll turn it back to Joshua to introduce our next speaker.</p>
Dubois	<p>DUBOIS: Well, thank you so much, Nancy-Ann. And thank you for the great work you're doing every day to ensure the health of our communities.</p> <p>And -- and, now, listen, folks. It's my great pleasure to present to you Alexia Kelley. Alexia is the director of the Center for Faith-Based and Neighborhood Partnerships at the Department of Health and Human Services, who, again, is sponsoring this call. Alexia is going to be our emcee today. She is going to describe for you the program and the agenda. And she's also going to introduce our next, very special guest, the Honorable Kathleen Sebelius.</p> <p>So, Alexia, I'll pass it off to you.</p>
Alexia Kelley	<p>KELLEY: Thanks so much, Nancy-Ann and Joshua, and good afternoon, everyone. My name is Alexia Kelley. And, as Joshua said, I'm the director of the HHS Center for Faith-Based and Neighborhood Partnerships, or The Partnership Center.</p> <p>And it's my pleasure to welcome you to this call, with faith and community leaders, and President Barack Obama, on health-care reform. We are also so fortunate to have the secretary of the Department of Health and Human Services, Kathleen Sebelius, here with us today.</p>
New benefits	<p>I want to thank all of you for joining us for this call. You are key leaders in your communities and congregations across the country. And we are so grateful for your participation. This call is an opportunity for HHS and the White House to provide to you directly, as community leaders, information concerning the new benefits that will begin to apply</p>

	this week, with the six-month anniversary of the Affordable Care Act.
Information	We want to make sure that you have this information directly in your hands, so that you can connect your members and help them access these new benefits.
Representative questions	<p>We have a robust agenda planned today, and we have faith and community leaders from different traditions, who have submitted questions, and will ask them on the call. They have tried to choose questions that are representative of what they are hearing from groups around the country.</p> <p>HHS and White House representatives will answer these questions, and engage with us.</p> <p>To launch this call, it is my honor to welcome and introduce my boss, HHS Secretary, Kathleen Sebelius. Secretary Sebelius serves as our nation's top health official. She is also the leading voice and vision at HHS concerning the implementation of the Affordable Care Act.</p> <p>Welcome, and thank you so much, Secretary Sebelius, for joining us this afternoon, and taking the time to speak with our nation's faith and community leaders about the Affordable Care Act during this six-month anniversary.</p>
Kathleen Sebelius	<p>SEBELIUS: Well, thanks so much, Alexia.</p> <p>And I want to not only acknowledge Alexia for her great work on behalf of this department, but also Joshua DuBois, who leads the Faith-Based and Community Partnership effort across the administration. And it's always good to have a chance to visit a little bit with my good partner, Nancy-Ann DeParle, from the White House.</p> <p>And this is a very exciting week for us. I -- I'm thrilled</p>

	to be with all of you faith-based and community leaders, on the call, because many of you were instrumental in the passage of the Affordable Care Act. I visited with some of you when you came to Washington and were advocating on behalf of the passage of the act. And, here we are, six months after the president signed the bill into law.
History	And there's no question that it was history made by passing the most significant health-insurance reform since Medicare went into law 45 years ago.
Insurance-industry abuses. Long-overdue reforms	The Affordable Care Act puts an end to the worst insurance-industry abuses, and gives all Americans, over time, better access to quality, affordable health care. The law contains long-overdue reforms that will put our health-care system on a path to sustainability.
People need help.	Now, there have been a lot of myths out and about, about what people are and are not saying. But I've not traveled to about 25 states. I've been talking to people about their health care. And I've seen the same things in your communities that you see every day. People need help.
Consumer protections	Beginning on Thursday, the 23rd of September, a new wave of important consumer protections will begin to make good on some of the most ambitious goals in the Affordable Care Act. But part of that challenge is that consumers need to know what the new benefits are, what's available to them, and that they have some very basic rights now that they didn't have before.
Insurer-imposed lifetime limits. Preexisting conditions.	We intend to put an end to insurer-imposed lifetime limits on coverage while phasing out the annual limits on benefits, which often leave people without

Children.		insurance when they need it most, when they get sick. The protections put an end to denying coverage to children because they were born with a preexisting condition or developed it during their childhood. So most plans will be open to those children for the first time, and give their parents some peace of mind.
Fair 3 rd -party appeals process		We want to empower consumers by giving them access to a transparent and fair third-party appeals process, when they deal with their insurer, and debate protocol that should have been provided.
Critics- ideological, radical bill		Over the last year and a half, during the debate on this law, we've seen critics try to paint a picture of this law as an ideological, radical bill that's going to take away folks' doctors, end Medicare, and install some completely new government health system.
Washington communities	v	But it's important for people to know that is absolutely not what the law does. What people are going to see over time is the picture of the law that they're hearing about from Washington doesn't match up with the picture that they see in their communities. And that's where your help comes in. We need your participation -- leaders and members of community and faith-based organizations, who know your members well, and know how to pass information along.
Benefits and rights		We want to make sure that the members of your community know about their new benefits and rights. As trusted leaders, you have a unique ability to communicate critical health information in a way that makes a lasting impression. And, frankly, you have their attention so you can repeat it over and over again.

Hard-to-reach communities	There are a number of people in the United States who we know are particularly difficult to reach with health information. And as faith and community leaders, you know who those folks are. You know where the hard-to-reach communities are, and you know how to reach them. So by working together, we can help ensure that people in all communities have access to accurate information they need to stay healthy and safe.
Website	We have a great new resource in our Web site, healthcare.gov. We also have that Web site in Spanish -- cuidadodesalud.gov. It has clear explanations of how the law helps individuals, depending on their health-care needs. And, for the first time ever, gives people the ability to go to one Web site and, with a few clicks, see and compare all the health-coverage options.
Information	And we're not selling anyone anything. So this is just to give consumers some information that they can use to better negotiate the marketplace.
Benefits. Security.	As the new reforms take effect, people are seeing the facts about the Affordable Care Act. They're seeing that they're going to be able to keep a child on their plans, when that adult child looks for a job after high school or college -- a really good benefit in this economic time. A spouse who runs a small business can be eligible for a tax credit to help cover employees. And they're going to have extra security knowing that, if someone gets laid off or retires or switch jobs, they'll be able to get insurance even if they have diabetes or high blood pressure.
American people	What I think the American people will want to continue is to see the law implemented and carried

	out effectively to answer their questions and, when we can, improve the bill as it is.
Consumers aware of benefits	So this administration is doing just that, under the leadership of our president, Barack Obama. He charged us with the job of implementing the law to make sure that consumers were being aware of the benefits -- were owed to them. And we're doing our best to make sure that happens. And with your help, we can get the word out to the American public.
Bishop McKenzie	So I, again, want to thank you for being on the call. I think we're going to have time for a question from Bishop Vashti McKenzie. Bishop McKenzie? MCKENZIE: Yes, Secretary Sebelius, thank you so much for hosting the call today.
Misinformation	I'm -- I'm just amazed at the misinformation and non-information that is going out about the things about this Affordable Care Act.
Young people	I'm a parent of young adult -- young people. And on behalf of all of the parents of young adults, we are concerned because our young people are just beginning their careers, their job work. And the kind of salary or payment plans they're on just really does not afford for them to have health care, or whatever health care they have is just so minimal.
On the plan until they're 26.	Many of us live holding our breath, hoping that nothing happens. And so I -- I-- I understand that in this Affordable Care Act, at this six-months juncture, it kicks in that we may be able to keep our young people on the plan until they're 26. What do parents need to do? How does it work? And how do we get this message out so that parents of young adults can sleep at night? SEBELIUS: Well, Bishop McKenzie, that's a great

	<p>question. And -- and -- and, first, I want to apologize for mispronouncing your wonderful first name, Vashti McKenzie.</p> <p>MCKENZIE: That's all right.</p>
Youngsters	<p>SEBELIUS: And, let me say, I'm also a mom of 20-somethings. And when our boys got out of college, neither of them were headed to a job that had health insurance. So I know this issue very, very well.</p>
Pre-existing condition	<p>Now, we were lucky because we had good health, and we had some resources to help them find insurance. But our younger son had a friend who had a preexisting health condition, and he was not so lucky. His dad told me that the good news was that his son graduated. The bad news was his health insurance was going to cost more than his college tuition. And way too many parents are in that situation, where either graduation from high school or graduation from college, or an age birthday, somewhere in the early 20s, depending on which state you live in, ends family insurance coverage.</p>
Exception	<p>So, first of all, the plan says -- the new Affordable Care Act says, starting this week, all insurance plans must reopen to include young adult children on a family plan. The only exception to that is if that child has insurance offered through his or her workplace. So the child doesn't have to live with you. They don't have to have been on the plan. If you have a 24 or 25-year-old and they were off the coverage for a while, they can get back on.</p>
Open-enrollment opportunity	<p>It really starts with checking with your own insurance company, because each company is going to do this a little bit different. They -- some companies have already opened the plans up. Others will have a date</p>

	<p>certain where you can reenroll. There will be an open- enrollment opportunity that parents can use to enroll their children, and actually enroll their children's spouses in the program.</p>
Special enrollment period	<p>So, insurers and employers are required to provide notice of the special enrollment period that follows this protection kicking into place. You need to, as a worker -- the workers are going to get the -- the notification that your insurance company will have an open- enrollment period. So you need to watch for it, or just ask about it, and expect an offer or continued enrollment for the child when you renew your coverage, if your child is still on your plan.</p>
Young adults	<p>So, young adults and their parents don't need to do anything but sign up and continue to pay the premiums for this option. And, as you said, Bishop McKenzie, it's a huge weight off the shoulders of lots of parents whose kids, you know, may be trying to get started in the job market -- may even be trying to start their own business -- may have some options, but, you know, they just need a little extra help. And not worrying about health coverage is a big step in the right direction.</p>
Great benefit	<p>MCKENZIE: Thank you so much. I mean, this really is a weight off our -- off our minds. But we will get this message out through our series of annual conference, through our great Social Action Commission of the AME Church, and through our various Web sites. We'll get this message out. And this is a great benefit. This is a great benefit for us.</p>
History	<p>SEBELIUS: Well, thank you so much. And, you know, we are implementing these reforms at what is a very difficult moment for our country. When the</p>

		administration came to office in January 2009, the economy was sinking to the bottom of the biggest economic downturn since the Great Depression.
Years of underinvestment. The "ditch we're in"		And in areas from energy, to education, to health care, we were paying a huge price for what were years of underinvestment. So in these challenging times, we have been incredibly fortunate to have a president who has been willing to make the hard choices and bold stands, not to just help us get out of the "ditch we're in," as he likes to say, but to make sure we emerge as a stronger, healthier, fairer country than we were before.
Future productivity		Now, he's the leader who did more than anyone to help get the Affordable Care Act passed, who continues to make sure that we're implementing effectively, and who knows just how important it is to the future productivity of this country.
		So it's my pleasure, now, to introduce my boss, President Barack Obama.
Obama		OBAMA: Thank you, Kathleen.
		It is wonderful to talk to all the -- the friends who are on this call -- the community-based organizations, the faith-based leaders, who are just such a key part in improving the health of our communities. And I am deeply grateful for the work that you've done in the trenches each and every day, even before we passed the Affordable Care Act.
Implementation		And -- and I want to thank Secretary Sebelius for hosting this call. The Department of Health and Human Services is working around the clock. I -- I -- I've witnessed this. I've watched how hard these folks are -- are working. And even opponents of the

	bill have praised Kathleen and her team for implementing this in a sensible way, to make sure that individuals and families and communities know how to access the benefits of health reform. And so I'm -- I'm grateful, Kathleen, for your leadership.
Anniversary New protections	I -- I -- I wanted to have this call because we've got a big day coming up -- the six-month anniversary of the passage of the Affordable Care Act. On September 23rd, a number of new protections for your families will roll out. And we want to make sure you know about them so that you can spread the word in your communities, because I think these new benefits can have a tremendous concrete impact on people who are still struggling to afford quality health care.
Informed decisions	And I'm going to describe a few of them for you, so you can begin to carry the work in towns and cities across the country over the next few days and months, to make sure people are able to make informed decisions about their health care.
American exceptionalism. 1 million seniors. Pre-existing conditions.	First of all, with respect to benefits, the Affordable Care Act is already working for all Americans. We can already see the positive impact that the law is having on people lives, whether it's more than 1 million seniors who have received checks in the mail to help them afford medications, or hundreds of thousands of individuals who were previously shut out of the health-insurance market on account of preexisting medical conditions, who are now enrolling in the new preexisting-condition insurance plan.
Bill of Rights	Starting on September 23rd, a critical new Patient's Bill of Rights kicks in that puts an end to some of

	the worst insurance abuses, and puts the consumers and doctors, instead of insurance companies , in control of our health-care system -- let me just tick off some examples.
Unjustified rescissions.	We're putting an end to unjustified rescissions. What that means is -- is that insurers will no longer be able to cancel coverage when you get sick, just because of a mistake on your paperwork. And this will help nearly 11,000 Americans who are dropped from their coverage, often when they need it most.
Children – 2.4 Americans	Second, we'll -- we'll give families peace of mind by allowing most parents to keep children on their coverage, up to the age of 26. As -- as many of you know, up to 2.4 million young adults could gain coverage as a consequence of this. And -- and young people are the people who are most likely to be uninsured, as they're starting off their careers, and sometimes in jobs where they just don't get insurance.
Preventive care	We're going to help 88 million people to get the preventive care they need to stay healthy, by requiring many insurers to cover recommended preventive services.
Emergency care	Finally, we're going to ban plans from charging individuals more if they go to an emergency room that isn't in their network, because people in need of emergency care should not have to worry about driving a few more miles for a cheaper co-pay.
Information - website	Now, these reforms are all going to make our health-care system better. We want to make sure you have the resources you need to spread the word to your friends, congregations and neighbors. And that's why we -- we created one of the most advanced

	government consumer-health-care Web sites we've ever seen. It's called healthcare.gov.
Website	Secretary Sebelius, I think, said a little bit about the site, but I -- I just want to stress what a terrific tool this can be. Not only will individuals be able to see plans that are available in their area, but starting on the first of October, we're updating healthcare.gov with price information for different insurance plans, which means that, for the first time ever, any American will be able, with a -- a few clicks, to see and compare all their coverage choices in one place. It's like a -- a travel search engine, except for health insurance.
He's a father too.	And -- and, by the way, I -- I've been on the site. I -- I've looked at it. And it is -- it is really an important tool, one that if -- if -- if I had had -- eight, 10 years ago, as the father of -- of young children -- it would have been terrific in terms of me probably saving some money.
PPACA is now law. Information	When people better understand the Affordable Care Act, they'll understand that, I think, this is not something being done to them, but is something that is really going to be valuable to them. And the debate in Washington is over. The Affordable Care Act is now law. So as -- I think all of you can be really important validators and trusted resources for your friends and neighbors, to help them understand what's now available to them, and how they can stay healthy and safe.
Access. American exceptionalism.	So, again, just in two days' time, on September 23rd, we are going to take a great step towards making sure all Americans have access to affordable, quality health care. And, as faith-based and community

	<p>leaders, all of you are already doing so much to make sure that the least of these in our nation and around the world have the support they need.</p>
Benefits.	<p>I believe these upcoming benefits advance this common goal. I'm excited to share them with you. I hope you'll spread the word.</p> <p>And, with that -- I understand that I -- I may be getting a question from our good friend, and a member of my Faith-Based and Neighborhood Advisory Council, Reverend Peg Chamberlin, who is the president of the National Council of Churches.</p> <p>Peg, are you there?</p> <p>CHEMBERLIN: I am. Thank you, Mr. President and Madam Secretary.</p> <p>It's an honor to be on the call with you, today, and these wonderful colleagues.</p> <p>I'm here to represent the National Council of Churches and our 45 million constituents, many of whom tell me all the time that they're praying for you and your family, Mr. President.</p>
American exceptionalism	<p>OBAMA: Well, I -- I believe in the power of prayers. So you -- you tell them to keep it up.</p>
Culture of health and wellness	<p>CHEMBERLIN: Amen.</p> <p>As I said, I serve as the president of the National Council, and we want to do our part to shape a culture of health and wellness. And I'm delighted to join with these tens of thousands of faith-based and community leaders to convey information about the new health benefits as they become available this week.</p>
Affordability	<p>Mr. President, my question is on affordability. It's quite clear that the questions I hear most often are about the cost of health care. And people are eager</p>

	<p>to understand how the Affordable Care Act can help with the cost of their health insurance. What can we tell our constituents about how the Affordable Care Act will make health insurance more affordable for families, and for individuals who, like most of us, are struggling these days?</p>
Exchanges	<p>OBAMA: Well -- well, let me -- let me talk about some specific provisions.</p> <p>First of all, many consumers shopping for insurance for themselves -- so they're -- they're in the -- let's say the individual market, or they're a small-business owner. And -- so they're not part of a big pool. They're not working for General Motors or Xerox or some big company.</p> <p>They, typically, are paying very high rates because they don't have any leverage. And so what we've done under the Health Care Reform Bill is to set up a series of exchanges. Now, this is going to take a couple of years to finalize. But these exchanges essentially allow millions of Americans to be part of a big pool that, by the way, includes members of Congress.</p> <p>And, by being part of a big pool, what they can do, then, is get the best possible price for insurance. And that means people who are, right now, trying to shop in the individual market, or they're a small-business owner -- they can't get much leverage with their insurance companies -- they're now going to have a lot more consumer power.</p>
Sliding-scale tax credits	<p>That, in and of itself, will lower their costs. But, in addition, what we're going to do is have sliding-scale tax credits for people who even, with lower prices -- even with a better deal -- still are having trouble</p>

		affording insurance. And those -- those subsidies are going to make sure that everybody is going to be able to afford to get a basic insurance plan; a quality insurance plan. And they may also be eligible for cost-sharing reductions to help them afford coverage and treatment.
Preventive health services. Premium-rate review provisions.		Now, what's also true is, for most consumers, the law will remove any out-of-pocket costs on recommended preventive health services like mammograms. And that should improve access to these potentially lifesaving measures. The law will also keep premiums down through a -- premium-rate review provisions that will force insurers to publicly justify many premium increases, and the minimum medical-loss ratio that will require insurers to spend at least 80 percent of premiums on medical expenses. So those are all steps that are going to make a difference.
Tax break -- less bankruptcies		Now, I -- I should mention small businesses are also now going to be getting a tax break if they're providing health insurance for their employees. That lowers their costs, which may mean that they can now finally provide insurance to workers who previously couldn't afford it. And they were having to dig into their own pockets if -- if there was a medical emergency in their families. That, obviously, is critically important. And it should mean that we're going to have less bankruptcies.
Wasteful tests. Medical errors		And the other thing that we're doing -- and this is more long- term, so I can't guarantee that it's going to make changes next year, or the year after, but all the medical experts who have looked at this said that -- say that we have to change our medical-delivery

	<p>system so that we have fewer wasteful tests when you go to a doctor. We're using electronic medical records more effectively. We're reducing medical errors in hospitals.</p>
Changes and practices	<p>And -- and so part of the health-reform law has been to incentivize changes and practices among all these providers so that they start doing things better, doing things smarter. And, over time, that should also lower rates.</p>
Free riders	<p>Finally, if you already have health insurance, you're probably paying \$1,000 premium that you don't know about, every year, to help hospitals with uncompensated care; meaning, when people show up at the emergency room, who don't have health insurance, oftentimes hospitals treat them. The only way they can afford to treat them is by indirectly charging all the other customers who do have health insurance.</p>
Lowering premiums	<p>So all -- all told, we expect that people's premiums should go down as much as 4 percent or 5 percent, over the long term. And, you know, that's a -- a -- a goal that I think can be achieved. But this is why it's going to be so important for us to sustain this health-reform effort over time. This is not sort of a -- a quick fix-it. This is something that is going to require a sustained, steady, dedicated effort. And that's something, certainly, I'm committed to, and Kathleen's committed to, and I hope all of you are committed to as well.</p> <p>SEBELIUS (?): Thank you, Mr. President.</p>

<p>Medicare</p> <p>Social security</p> <p>Cost control</p>	<p>OBAMA: All right. Well, it's wonderful to talk to all of you. Thanks for the great work you guys are doing. Get out there and spread the word. This is something that I think we'll be able to look back on, just like we do on Medicare and -- and -- and Social Security, as -- as, really, a cornerstone that improves the security of -- of millions of Americans; and, at the same time, hopefully, lowers costs so that we can -- we can get control of -- of costs both at the government level, but also for families and businesses.</p> <p>So, thank you very much for your attention, guys. Bye-bye.</p>
<p>Paul Monteiro</p> <p>Stephanie Cutter</p> <p>Mayra Álvarez</p>	<p>KELLEY: Thank you so much, President Obama and Secretary Sebelius, for joining with faith and community leaders across the country, today, on this call.</p> <p>I want to just take a moment to recognize two representatives from the White House who are with us today, as well as a HHS expert.</p> <p>Paul Monteiro is the associate director of the White House Office of Public Engagement, and Stephanie Cutter is assistant to the president. And they are both with us today. Also -- also, Mayra Alvarez, who is the director of public health in the H.H. Office of -- of Health Reform -- has joined us.</p> <p>And she and Stephanie will help answer questions from many of the leaders today.</p> <p>Thank you all for joining us. And Paul is going to offer just a few words so that you can link to his office at the White House.</p> <p>Thanks, Paul.</p>

Monteiro White House Office of Public Engagement	<p>MONTEIRO: Well, thank you, Alexia, for the great work you, Acacia, and the HHS team did in hosting the call today.</p> <p>Again, my name is Paul Monteiro, and I work for the senior adviser to the president, Valerie Jarrett, and Tina Tchen, in the White House Office of Public Engagement. And our office is known as the "front door" of the White House. And our aim is to include everyday Americans in the administration's work here, in Washington, and also as the president travels to towns and cities across the country.</p> <p>Today's call is a great example of ways that we're in contact to deliver important information, but also to hear from you. And, each week, our office is sending out detailed updates on domestic and foreign policies, and other presidential priorities. We also host regular conference calls to keep you informed about the work we're doing here, in Washington.</p>
email	<p>To receive our invitations, feel free to send us an e-mail at public@who.eop.gov -- again, that's just the word "public," at w-h-o, as in "White House Office," dot e-o-p -- Executive Office of The President -- dot gov.</p>
Economic recovery and future prosperity	<p>But the president's working each and every day to lay a new foundation for economic recovery and future prosperity. But that foundation is solid only as much as we're working along -- alongside all of you, really. Indeed, the Affordable Care Act wouldn't have become a reality without your persistent efforts.</p> <p>So please tell us about what you're doing to strengthen our country one neighborhood at a time. And thanks for joining today, and for everything that you do.</p>

	And thank you again, Alexia.
Rabbi Gutow	<p>KELLEY: Thanks so much, Paul.</p> <p>Next, we're going to move to a question from Rabbi Steve Gutow, who is with the Jewish Council for Public Affairs.</p> <p>Thanks so much, Rabbi Gutow, for joining us today.</p> <p>GUTOW: Thank you, Alexia. And thanks for -- thank you for doing this.</p> <p>Thanks to President Obama.</p> <p>Thanks for -- to Secretary Sebelius.</p>
Jewish Council for Public Affairs	As you may know, the Jewish Council for Public Affairs is an umbrella group that not only umbrellas 125 community-relations -- local community-relations councils -- but also 14 national organizations, including the four major Jewish religious movements.
<p>Accessible health to all Americans.</p> <p>Cutting poverty.</p>	<p>I -- I think we all feel it's extremely important that the work you've done has -- has put health care at a place that's accessible to all Americans. One of the -- one of the things we are doing, along with a lot -- it's co-chairing, actually, along with Catholic Charities and the National Council of Churches -- is an effort at -- at cutting poverty in half by 2020.</p>
<p>Health insurance</p> <p>Health -- work.</p> <p>Economic costs</p>	<p>We have 36 national organizations. And one of our major focuses is -- is health insurance; because, if you can't be healthy, you can't work, and you can't cut poverty. And, unfortunately, as you all know, better than I do, because of economic costs, many families don't -- don't even go in and receive consistent checkups that could aid in disease prevention.</p> <p>And how will the -- how will these benefits help -- help these families -- how will these new benefits...</p>

Mayra Álvarez Sickness and disease to wellness and prevention.	<p>KELLEY: Thanks, Rabbi Gutow, for that great question. I think we have Mayra Alvarez with us, from HHS, who can answer that question. Thanks, Mayra.</p> <p>ALVAREZ: Thanks, Alexia.</p> <p>Definitely, that's an important question. I think one of the most important parts of the Affordable Care Act is the idea that we're really moving our nation's health-care system from one based on sickness and disease, to a system based on wellness and prevention.</p>
Chronic diseases	<p>Chronic diseases today -- things like heart disease and cancer and diabetes -- are responsible for seven of 10 deaths among Americans each year, and account for 75 percent of our nation's health spending. And we all know that they're often preventable.</p>
Preventive services	<p>The Affordable Care Act will help make prevention affordable and accessible by requiring that private health-insurance plans cover recommended preventative services without charging things like a deductible, a copayment, or coinsurance. That begins this Thursday, September 23rd, for all new health policies. All these preventative services that have strong, scientific evidence of their health benefits must be covered. And plans can no longer charge the patient.</p>
Reducing costs	<p>Removing this financial barrier is particularly important for low-income families across the country. I think having access to high-quality preventative care really will help Americans stay healthy and avoid or delay the onset of disease, allowing them to lead productive lives through, frankly, reducing</p>

	costs for the health- insurance system as a whole.
Recommended preventative services	These recommended preventative services are recommended by the best scientific experts our nation has. It's evidence-based preventative services from the U.S. Preventative Services Task Force; routine vaccines that are recommended by the Advisory Committee on Immunization Practices; as well as preventative services for children that are recommended by the Bright Futures guidelines -- guidelines that were developed by the Health Resources and Services Administration, in a partnership with the American Academy of Pediatrics.
Benefits of the ACA	If you think about these services -- things like blood-pressure screening, diabetes tests, many cancer screenings -- even counseling related to quitting smoking or losing weight -- really will give Americans the tools and resources they need to make the changes necessary to live a healthier life. It's one of the most tangible benefits of the law that Americans will be able to see right away -- the benefits of the Affordable Care Act -- in order to help them live healthier lives for the future.
Gloria Cooper	KELLEY: Thanks so much, Mayra, and Rabbi Gutow. Now, we have a question from Gloria Cooper, with PICO. Thanks so much, Gloria, for joining us.
	COOPER: Thank you very much. I'm Gloria Cooper from the Groida (ph) Antioch Church of God in Christ, in San Diego. My congregation is a part of the local PICO affiliate of San Diego Organizing Project. I also serve on the

	national steering committee for the PICO National Network.
Jeremiah 8	We've built a powerful network. PICO organizes in over 1,000 congregations, representing 1 million families in 150 cities in 18 states. We took up the fight for national health-care reform because our people were crying out, as we've read in Jeremiah 8 , "Is there no balm in Gilead? Is there no physician there?" Is there no health care for my people?
Bring Health Reform Home	<p>And, now, we have a balm. And PICO is committed to ensuring our people will have access to it. We're launching a campaign which we are calling, "Bring Health Reform Home."</p> <p>PICO is bringing faith leaders together with other stakeholders to take full advantage of the opportunities contained in this legislation. We're rolling up our sleeves to get our communities ready for reform. And we know that for this reform to be successful, the community must be represented at each level of the decision-making process.</p>
Community health centers	<p>Our question is: How are you working to make sure that our communities are at the center of health-care reform? Specifically, how are you going to make sure that key implementation decisions are in areas such as community health centers, Medicaid-demonstration projects, and hospital accountability, including criteria for strong community partnerships? And, lastly, what other structures you will create to ensure a powerful community voice in the process?</p> <p>KELLEY: Thanks so much, Gloria.</p> <p>Mayra and Stephanie, can you provide some response to Gloria?</p> <p>CUTTER: Sure, I'll -- I'll -- I'll take that question.</p>

	<p>Thank you, Gloria.</p> <p>I'm actually from San Diego, myself. So it's good to...</p> <p>COOPER: Great.</p>
Control from insurance companies to consumer's hands.	<p>CUTTER: ... connect with someone that's also from San Diego. I really do miss my home town a lot.</p> <p>I worked on the Hill during the health-reform debate and saw, firsthand, just how engaged and just how committed PICO's members were. So thank you for your leadership in that, and for doing all that you did to make health reform a reality.</p> <p>Everyone on the call -- thank you.</p> <p>I think it's important that every process of the Affordable Care Act implementation take into consideration what it is that communities are expecting from this law. I think the president said it best when -- we're really trying to put the tools and resources back into the consumer's hands so that health care and the management of -- of your individual health care -- is taken out of the control of insurance companies, and back in your control.</p> <p>I think, through tools like healthcare.gov -- I think the phone calls, like this -- I think through an open-door process that the center has, and through our office, we really are trying to engage with as many people as possible.</p>
Health centers	<p>You mentioned community health centers -- a -- a longstanding requirement for community health centers is to have 50 percent representation of their community on their board of directors. I think that's specifically relaying to your concern about how communities can better educate our process moving forward, whether it's through implementation of the</p>

	<p>Affordable Care Act, or the direction of our health-care system in general.</p> <p>The -- you really are on the ground doing the work with the people, and it's your intelligence and guidance that we need to make sure we're successful for the future.</p>
Spreading the word	<p>COOPER: Great. Thank you for your response.</p> <p>And I want to let you know that this week, the PICO Network is reaching out to our 1 million families and the larger community to let people know what they have to do, and what they expect from the health-care providers and the insurance companies. And I'm going to personally be knocking on doors and spreading the word along with hundreds of other leaders from Vermont and New Jersey, New York, to Florida, Louisiana, Missouri, New Mexico, California.</p>
piconetwork.org	<p>We will reach more than 50,000 people this month. And I want to invite everyone on this call to join us by visiting our Web site at piconetwork.org, where you can order posters and door-hangars, and download other, easy-to-use information. You can also see events happening around the country.</p>
Dr. Ingrid Mattson	<p>If you think this is important, then we all need to get out and walk the talk, and let the people know that there is a balm in Gilead. Thank you.</p> <p>KELLEY: Thank you so much, Gloria, for sharing that information.</p> <p>We will hear now from Sister Carol Keehan, who is CEO of the Catholic Health Association.</p> <p>Thank you so much for joining the call, Sister Carol.</p> <p>Do we have Sister Carol Keehan on the phone?</p> <p>Why don't we move to Dr. Ingrid Mattson, and then we'll -- we'll -- we'll go back to -- with Sister Carol's</p>

	<p>question.</p> <p>We have Dr. Ingrid Mattson, who is with the Islamic Society of North America.</p> <p>Thanks so much for joining us today, Dr. Mattson.</p> <p>MATTSON: Yes, it's my pleasure. Thank you for inviting me.</p> <p>I am with the Islamic Society of North America. We have -- we represent Muslims from all across the country. And our community is diverse. We have people who have no problems accessing expensive health insurance, but we also have many people who are -- have -- have very limited means, and are really struggling, especially in -- in this economy, and with so many having lost their jobs in the last few years.</p>
Children with preexisting conditions	<p>My question is -- is about children, in particular. I am the mother of a child with a chronic illness. And I run into so many other parents in our various trips to the hospital and the doctor. And I often think about the needs of other children like my daughter.</p> <p>We've been fortunate and able to -- to be able to afford her insurance, and to continue that coverage. But I wonder about other children with preexisting conditions like asthma and diabetes -- cystic fibrosis. How will the Affordable Care Act help these children and make sure that they're not denied health-insurance coverage, and that they otherwise get the care they need to be healthy?</p>
Denying insurance	<p>KELLEY: Thanks so much, Dr. Mattson, for that important question.</p> <p>Mayra, can you help us with that question?</p> <p>ALVAREZ: Sure. Yes, definitely. Thank you, Dr. Mattson.</p> <p>I think regardless of where you stood as far as your</p>

	<p>opinion on passing health reform -- I think we can all agree that we want to have our kids be as healthy as possible for now, and for the future. Before reform, tens of thousands of families had been denied insurance every year for their children because of an illness or condition. This week, starting on September 23rd, plans -- private plans -- can no longer discriminate against kids with preexisting conditions. And in 2014, no one -- no adult or child taking coverage can be discriminated against because of a preexisting condition.</p>
Very complicated health-insurance market to manage	<p>Again, this was said earlier on the call -- I think the importance is -- is that the individual market is a very complicated health-insurance market to manage. And if you have a preexisting condition, whether you're an adult, or if you're a child, it's very difficult to access coverage that is affordable, and that is comprehensive enough to meet your needs.</p>
Past insurance-company abuses	<p>The idea is that your insurance should be there when you need it the most. And these types of changes to past insurance-company abuses is making that possible for families across America.</p>
Preventative services and children Insurance failing	<p>I want to reiterate another change, really, to the preventative services, and the preventative services that private plans will be required to cover. Specifically, today, 12 percent of kids haven't had a doctor's visit in the past year, and nearly one-third of kids are overweight or obese, putting them at risk for conditions such as diabetes and heart disease.</p> <p>What we really want to do is provide American families the tools they need to make sure their kids can be the healthiest they are. Things like, you know, going in for their annual well-child visit, their well-</p>

	<p>baby visits, childhood immunization to prevent disease, screening your newborn, doing ongoing screening and counseling to address obesity and help children maintain a healthy weight -- these types of information that can help our families make sure that their child stays healthy, or is healthy for the future.</p>
	<p>KELLEY: Thanks so much, Mayra.</p> <p>And thank you, Dr. Mattson, for that -- for sharing that question.</p> <p>I think we now have Sister Carol Keehan, who is -- has joined us, with the Catholic Health Association.</p> <p>Thanks for joining us, Sister Carol.</p> <p>KEEHAN: Thank you, Alexia, for having this conference.</p> <p>One of the -- the one question -- and we heard a little bit about it from the president -- but the -- the worst health horror stories people hear are about insurance failing them when they need it most. They hear about people who have lost their insurance after getting sick, and it gets canceled; and, some, because of a simple paperwork mistake. And, according to the president, after the 23rd, that's not going to be possible to be inflicted on them again.</p> <p>Could -- could someone say a few words about how that's going to work, so that we can give some encouragement to the people -- the many people who face this every year in our country?</p> <p>KELLEY: Thank you so much, Sister Carol, for that question.</p> <p>Mayra and Stephanie are both on to help answer questions.</p>

	Mayra, would you like to answer that -- or Stephanie?
Insurance companies are going to be banned from cutting off your coverage due to these unintentional mistakes	<p>ALVAREZ: Sure. I'll take a crack at it.</p> <p>Before reform, insurance companies, as you said, Sister, could cancel your coverage when you were sick and you needed it the most -- things like if you ended up being a more costly case, the insurance company could, then, go back up to, maybe, I think, two years, and search for any mistake that you made on your application. If they were to find a mistake, they could point to that and say, "Oh, you made a mistake on your application. Now we can deny you the coverage that -- you thought you had it." This is particularly devastating to families that thought their insurance was going to be there when they needed it.</p> <p>This Thursday -- again, starting on September 23rd -</p> <p>- insurance companies are going to be banned from cutting off your coverage due to these unintentional mistakes. In addition, we're creating a brand-new tool for appealing to your insurance company regarding any decisions that they may make on denying you coverage for a certain procedure or a certain surgery that you need.</p>
Internal appeal process	<p>Today, many insurance plans have an internal appeal process where you, as a consumer, can go to your insurance company and, basically, negate a decision that they made. In the future, we're also going to have an independent third party be made available to consumers to make sure that you have this external party -- an independent entity -- examining your case, through the Department of Insurance and -- the states across the country will be</p>

	<p>able to establish that entity and make sure you have another voice to listen to your concerns and be able to fairly evaluate your decision.</p> <p>KEEHAN: Thank you.</p>
Linda Walling	<p>KELLEY: Thanks so much, Mayra, for that great answer.</p> <p>And, now, we have a question from Linda Walling, who is with Faithful Reform. Thanks so much, Linda, for joining the call.</p> <p>WALLING: And thank you, Alexia, for all of this. This administration has been very generous in thanking the faith community today. But on behalf of the Faithful Reform and Healthcare Coalition, I really want to extend our sincere appreciation to you for hosting this very, very important conversation.</p>
Health-wholeness and human dignity	<p>In addition, I am pleased to pledge the commitment of our National Interfaith Coalition for the long-term work that is needed to fulfill our vision of a health-care system that really does lead to health-wholeness and human dignity for all. This commitment will bring with it people of faith to this issue, from every state, and from most faith groups who really care about health-care reform in the United States.</p>
faithfulreform.org	<p>Post-reform, we are working to educate the public about the new law. And, each week, new faith-specific resources, focused on dialogue, rather than debate, are posted at faithfulreform.org. And this week, on the 23rd, on Thursday, we're launching a "What I Like about Health Care Reform" campaign.</p>
Community health centers	<p>But, in addition to all of this, out of our desire to be healing partners, we are looking to connect people to the new and expanded programs that will open doors</p>

	<p>to needed health care. Knowing that community health centers will provide many of these vital services, we are really very grateful that the Affordable Care Act provides substantial new funding for their work.</p> <p>Our question is: How can the historic partnerships between our groups and the Centers of Care and Compassion be strengthened to ensure that the people who need health care actually get connected to the new services that will be available to them?</p> <p>KELLEY: Thanks so much, Linda, for that great question, and for all that you're doing on -- on -- you know, taking health-care reform, and bringing it to communities across the country.</p> <p>Mayra is available to respond, and we may have some others that can provide some response as well. So, thanks, Mayra.</p>
<p>Community health centers</p>	<p>ALVAREZ: Sure. Yes, thank you for raising the importance of community health centers. Definitely, the Affordable Care Act has made a historic investment in community health centers. We know that the funding included in the Affordable Care Act will help to grow that program, not only improving existing facilities that we see in communities nationwide and -- and provide funding for better services and training, but also to be able to establish new health centers throughout the country, in areas where they're needed the most.</p> <p>Community health centers, today, really do play an integral role in providing comprehensive health-care services to some of the most medically underserved communities in our country. I think faith communities are -- really are the trusted messengers. And you</p>

	<p>have a deep understanding of the health needs in your local congregations.</p> <p>Because you understand so well the needs of your community, by developing robust partnerships with your local community health centers, I think the faith community can help keep your community healthy, and link your members of your congregation to the important health-care services that they need.</p>
\$11 billion	<p>The Affordable Care Act provides \$11 billion to bolster and expand community health centers over the next five years; \$1.5 billion, alone, will support construction and renovation at community health centers that exist today. But the other \$9.5 billion is going to go to, really, creating new centers where they're needed, and to expanding the services that are available. Things like oral health and behavioral health are -- are in high demand by many communities, particularly low-income communities. And we're trying to make those more available.</p>
New health centers	<p>You might have heard that late last month, the department announced the availability of \$250 million to support the creation of new health centers across the country. We're expecting that about 350 new community health-center sites will be established as -- with this \$250 million. We're excited that we're going to try to make health care more affordable and cost-effective, and that more primary-care services will be available to communities across the country.</p>
Get the word out there	<p>DUBOIS: And -- and, hey, Mayra -- thank you for that answer. This is Joshua.</p> <p>And, Linda, just to add -- I just want to underscore and thank you for all that you've done, and other</p>

	<p>organizations have done, to really get the word out there about these benefits. I know that there are some -- you know, folks are -- are using this upcoming weekend, Saturday and Sunday, to -- to -- to push the message out about how folks can make sure that they are aware of the benefits available to them. You've produced guides and sermon guides and all -- all kinds of things.</p>
Community engagement	<p>So I just want to underscore how important that community engagement is, even, you know, in the near term, and this upcoming weekend. And -- and thank you for all the work that you've done already.</p>
The role of the faith community	<p>WALLING: Well, thank you to all of you. And I -- I -- your remarks just really confirm that the role of the faith community is more than just working for system change. But it really is trying to figure out how we connect the lives of -- of people of faith, and all of our country, really, too, to much-needed health-care services, and our role in -- in helping to make that happen. So, thank you.</p>
Jennifer Beeson Families USA	<p>KELLEY: Thanks so much, Linda.</p> <p>And, now, our next question is from Jennifer Beeson, who is with Families USA.</p> <p>Thanks so much, Jennifer, for joining us on the call.</p> <p>BEESON: Well, thank you very much. On behalf of Families USA, I want to thank you and the many people at the White House and in HHS who have been working overtime for the last six months to implement this law carefully and fairly. And we really appreciate that. And we appreciate you reaching out to us.</p>
familiesusa.org	<p>Families USA has been working for 30 years to increase people's access to quality, affordable</p>

	<p>coverage. And we do much of that work with the help of community-based organizations and faith-based organizations. And you can see some of our resources on our Web site at familiesusa.org.</p> <p>Here at Families, we encounter consumers every single day, talking to folks who can be helped by the Affordable Care Act. Sometimes, it's a family who has a child with a preexisting condition; or a young person who is coming out of school and has unstable employment that doesn't offer health coverage; or a small-business owner who would like to cover her employees, and -- and can't afford to.</p>
<p>Misinformation or inaccurate information</p>	<p>You know, when we talk directly with consumers, they're excited about the law. You know, some of them are going to be helped by provisions that are coming online this very week. But I think there's a lot of misinformation or inaccurate information out there, in the public sphere, about the law. People are confused about it, and don't know all the good things it does.</p> <p>So my question is: How -- what is the best way to get the word out about the good things that this law does, and will do for families.</p>
<p>Protections</p>	<p>KELLEY: Thanks, Jennifer.</p> <p>And, I think, Joshua and Stephanie can respond to this.</p> <p>DUBOIS: Yes, I'd be happy to speak to that.</p> <p>You know, I don't want to be too prescriptive here. I -</p> <p>- I would say everyone on the call in the organizations dialing in to ask questions should use their own tools. But I just think it's important, mostly, because these protections that we're talking about today, whether it's making sure that kids can't be</p>

	<p>dropped from their health insurance because of preexisting conditions, or ensuring that young folks can stay on their parents' insurance until the age of 26 -- our families need to know this. And if they don't know it, then they're -- they're not empowered to make sure that these protections exist for them.</p>
Door-to-door knocking	<p>And so, whether it's, you know, to -- reaching out to - - in your local faith community, using this moment of the six-month anniversary to organize around -- you know, I know folks like PICO are even doing door-to-door knocking. What -- whatever tool you have, I think it's just important to get the word out there, to get the specific information out there.</p>
Health of our communities	<p>And I would also say: Make use of the resources that have been described on this call. Folks have talked about Web sites and door hangars and one-pagers and so forth. And, you know, there's nothing more important than the health of our communities. And so we -- we really got to work to get the -- get the word out.</p>
Insurance abuses	<p>Stephanie, I don't know if there's anything you wanted to add to that.</p> <p>CUTTER: No. I would just echo what Joshua said -- that it's -- it's conference calls like this that help in the process, in educating people about what's in the bill, or what's in the new law; it's efforts on this coming weekend to your memberships and churchgoers to talk about what it is that they can start benefiting from in these new Patient's Bill of Rights, and some of the insurance abuses that have been -- are now over as of September 23rd.</p>
Major fundamental reform	<p>You know, we've been working, trying to reach out, with the help of everybody on this call, over the</p>

	<p>course of the last six months, as we're working to implement to bill. It's been a slow process. This is a major fundamental reform. And it's a -- it's critically important to break apart the pieces of it. And that's what September 23rd is about. On the six-month anniversary, the critical consumer protections that are in the law go into effect. And breaking apart those consumer protections and educating people about how they'll protect their families, their businesses, their economic security, is an important piece of the process and helping people understand the law.</p>
Critics	<p>We all see the critics still putting information out there to -- scare tactics about what is in the law, and using that misinformation to drive public opinion. You know, there are efforts to push back on that, but our primary goal here is really to educate people about what's in the law so that they can benefit from it.</p>
Patient's Bill of Rights	<p>So I just want to thank you for -- for your efforts. And you've been important partners in this process. And we look forward to talking about the Patient's Bill of Rights over the next several days.</p>
Partnership Center at HHS	<p>KELLEY: Thanks so much, Stephanie and Joshua. And thanks for that great question, Jennifer.</p> <p>I just wanted to add two points from our center -- the Partnership Center at HHS, and make sure folks had our Web site. Everyone knows about healthcare.gov -- it is in English and Spanish. And we are offering tours of that -- Webinar tours of that - - for community and faith leaders. And you can find out about that either via our e-mail, which is partnerships@hhs.gov, or on our Web site, which is hhs.gov/partnerships.</p>

Newsletter insert or a bulletin insert	<p>And on that Web site, hhs.gov/partnerships, we also have a one- pager -- flier -- like a newsletter insert or a bulletin insert -- which details the information available and the benefits of the healthcare.gov site for community members. So that is on a -- on a -- a document on our site at hhs.gov/partnerships; so you can download that one-page flier, or send it around via e-mail. And that's up on our Web site. So consider us an open door at HHS for you as well, and for your members.</p> <p>Thanks so much, again, Jennifer, for that question, and Joshua and Stephanie.</p>
Dr. David Gushee	<p>And our next question comes from Dr. David Gushee, who is with the New Evangelical Partnership for the Common Good.</p> <p>Thanks so much, Dr. Gushee, for joining us today.</p> <p>GUSHEE: Well, I'm glad to be a part, Alexia.</p>
New Evangelical Partnership for the Common Good. Moral imperative.	<p>I would say, though, it's sad. I'd have to acknowledge that the New Evangelical Partnership for the Common Good was one of the few self-identified evangelical organizations to support health-care reform. And, I mean, we supported it because health-care reform for every person is a moral imperative rooted in the dignity of the human person, made in the image of God.</p>
Stages for the implementation	<p>And so we remain strongly supportive, and are excited to -- to see the implementation happen. And that's kind of where I want to ask my question.</p> <p>I think part of the political vulnerability, you might say -- or misinformation vulnerability -- is the way that the law is being rolled out, in stages. I'm excited to see the -- what's happening on the 23rd. But what still lies ahead? What -- are there -- are there</p>

	identifiable stages for the implementation of the law between now and -- and 2014?
Insurance-company abuses. Blocks to quality health-care coverage	<p>KELLEY: Thanks so much for that question, Dr. Gushee.</p> <p>We have Mayra and Stephanie available to ask that. Mayra or Stephanie?</p> <p>CUTTER: Mayra, do you want to take a crack at it?</p> <p>ALVAREZ: Yes, absolutely.</p> <p>CUTTER: OK.</p> <p>ALVAREZ: So I think it's great that you're alluding to the great things that are going to be rolling out on September 23rd, ending some of the worst insurance-company abuses that have been happening for far too long, and have been really -- been huge blocks to quality health-care coverage for millions of Americans.</p> <p>But it really is only the beginning. I think in the months and the years to come, we're going to continue to improve our health-care system. We're not going to wake up on, you know, January 2014, and have a brand-new health-care system. It's really going to take time and input and interactive conversations like this to make sure we're doing it the right way.</p>
More security. State-based health-insurance exchanges	<p>Frankly, I mean, the new law provides more security. It's going to ensure our families always have guaranteed choices of quality affordable health insurance. If you lose your job, if you get sick, if you move or you switch your job, you're always going to have somewhere to go for health insurance. By 2014, there's going to be state-based health-insurance exchanges to provide individuals and small businesses with private-insurance choices.</p>

	<p>And it will provide premium tax credits to those who can't afford insurance, so that you can make sure you have that extra help that you need to access the quality, affordable health-care coverage that your family needs and deserves.</p>
Medicaid is expanded	<p>This is going to significantly reduce disparities in accessing high-quality health care. And for those that are unable to afford the private insurance, you'll have a real safety net by making sure that Medicaid is expanded.</p> <p>Today, there are roughly 60 million Medicaid recipients, but there are millions more that are eligible. What we're trying to do through the Affordable Care Act is expand Medicaid to make sure that everyone living below 133 (ph) percent of poverty -- that's \$14,400 for an individual, or about \$28,000 for a family of four -- has a real safety net.</p> <p>Today's Medicaid program is tremendously helpful for families that have children, or for pregnant women. But if you're a single man with no children, it's very difficult to find affordable health-care coverage. We're going to expand Medicaid to make sure that you're able to have somewhere to go. Sixteen million Americans will be newly eligible for Medicaid services in 2014.</p> <p>That's -- I mean, that's really what the Affordable Care Act is all about. I think it's giving Americans, again, back the control of the system that should be responsive to their needs all along.</p> <p>GUSHEE: All right. Thank you very much.</p>

Reverend Abrams	Cynthia	<p>KELLEY: Thanks so much, Mayra and Dr. Gushee, for that great question.</p> <p>And our last question today comes from Reverend Cynthia Abrams, who is with the United Methodist Church Board of Church and Society.</p> <p>Thanks so much, Reverend Abrams, for joining us today.</p> <p>ABRAMS: Thank you.</p> <p>I -- I am asking a question on behalf of the Washington Interreligious Staff Community, which represents many of the national denominations and faith groups who work -- have worked historically on health care. And we -- I'm the convener of the Health Care Working Group within the WISC -- Washington Interreligious Staff Community.</p>
Priority to get this word out		<p>And in that group, with the faith groups, and with -- and within my own denomination, the United Methodist Church, we've been promoting health care for a very, very long time in the U.S., and around the world. And, certainly, we think it is a priority to get this word out to our communities, and to our local churches. I know the task for office staff is -- is -- is big -- for myself to get -- and for the staff at the United Methodist Church -- to get the word out about this act to 47,000 United Methodist churches around the country, and the clergy within those churches, and to their -- ultimately to their communities.</p>
Rising cost of health insurance		<p>Today, though, I want to ask a question about -- in particular, about congregations and churches and denominations and faith groups -- we are all employers, too. And we are employers of clergy. We're employers of church staff, secretaries, youth</p>

	<p>directors, etcetera. And, frankly, the rising cost of health insurance is a heavy burden on congregations and clergy trying to do ministry.</p> <p>We hear from them all the time about this rising health-care -- the rising health-care costs. And we are concerned about how the Affordable Care Act affects or even benefits congregations as employers. Can you share how the act might benefit churches as employers, and where we might find information to educate congregations about the law's impact on our role as employers?</p> <p>KELLEY: Thank you so much, Reverent Abrams, for that question.</p> <p>And, Mayra, thanks for providing a response.</p>
healthcare.gov	<p>ALVAREZ: Sure, definitely.</p> <p>First, I want to, again, reiterate healthcare.gov. I think what we really want to do is make that a central database of information put forward in a consumer-friendly format to make sure it's easily accessible to you, and that you are able to get the information you need to make sure it's shared with your congregation. It's a one-of-a-kind Web site that people here worked really hard to make sure it was responding to community needs and its ongoing changes every day, responding to concerns and comments from folks that go to the Web site and find something that they might not be happy with.</p> <p>If you go throughout the Web site, there's little yellow bubbles where you could directly put in your input and thoughts on the Web site. And, like I said, we really want to be as responsive as possible.</p>
Costs	<p>I think, earlier on the call, the president alluded to the fact that many of the changes associated with the</p>

	<p>Affordable Care Act are going to take time. And it really is fundamentally shifting the way health care is delivered in our country today. The way health care is delivered in our country today has really caused our health care costs to -- to rise astronomically. And that has trickled down into the premiums that you are paying on behalf of your employees.</p>
Free riders	<p>What we want to try to do is not only shift the way health care is delivered so that we're more efficient and effective at providing quality health care, but also to provide insurance coverage to more individuals, so we don't have people seeking assistance at the emergency room. That, then, has an impact on everyone that has insurance.</p>
Healthier population	<p>I think the idea is to have a healthier population. A population that's covered will reduce costs in the future. Employers, obviously, depending on the size, have certain advantages that individuals and small businesses do not have. The idea of a large company like G.M., or like Xerox, are able to really "spread the risk," as they say -- spread the risk of -- of illness across their pool of employees, so that if one person gets sick, it doesn't really make that much of a difference in the premiums for the employees as a whole.</p> <p>But if you look at a smaller business, one of 20 employees or -- or -- or 30 employees -- it's a much more difficult situation. One person that gets sick, or the wife of that one worker gets sick -- the premiums could really have a much larger impact on the rest of the employees of that small -- smaller business.</p> <p>What we're trying to do is level the playing field for the individual and small groups, so that they're able</p>

	<p>to have the same advantages of larger businesses like Xerox or G.M. We're -- we're implementing those changes so that we can create a health-care system that's fair to all Americans. And I think churches fit right into -- all congregations fit right in that idea of making sure that the benefits impact everyone across America.</p> <p>ABRAMS: And did you say that there was a place on the Web site where they might go if they have specific comments about the, perhaps, unique nature of their particular denomination or faith group, and specific -- more specific questions that they might get answered, and where they might be -- and a place where they might go so that they can find someone who can give them more specific information about these -- these components of the law?</p>
Website and email	<p>ALVAREZ: Yes. Well, there is a couple of spots, actually.</p> <p>On the health-care law itself, there is a variety of information that you can look -- on the healthcare.gov Web site, I'm sorry -- that you can look up information, whether it's finding your insurance- company options or understanding the new law. Specifically, I believe -- Alexia, you might want to speak to this more -- that there is an e-mail that people can send comments to your shop (ph), and that, you know, it'll be...</p> <p>DUBOIS: Sure.</p> <p>KELLEY: Yes.</p> <p>DUBOIS: And that's partnerships@hhs.gov. And for faith-based and community-based leaders that want more information, drop a line to partnerships@hhs.gov, and they'll be able to get</p>

	back to you, there.
Website	<p>ABRAMS: Thank you so much. And I just want to say a word about -- each of the faith groups that are working on health care that are in the Washington Interreligious Community are also -- also have Web sites. Every denomination and faith group has a Web site, and many of them have information about the law and about their own specific campaigns.</p>
	<p>And we are also partnering with Faithful Reform and Healthcare on the resources they provide, and the launching of the campaign that they'll be doing this week. And so we thank them as we work together on this issue, throughout the enactment of this law.</p> <p>And I want to also thank all of the White House staff, the administration, and Health and Human Services staff for bringing us together on this call. This has been extremely helpful in pushing forth, I think, accurate information that our congregations and our communities can benefit from. Thank you so much.</p> <p>DUBOIS: Thanks.</p> <p>KELLEY: Thank you, Reverend Abrams.</p> <p>And, with that, I'm going to hand the call back over to Joshua DuBois, who is going to close our call. Thanks so much, everybody, for joining today. Joshua?</p> <p>DUBOIS: Sure.</p> <p>Well, thank you, Alexia.</p> <p>And, again, I want to thank everyone for joining.</p>
New Patient's Bill of Rights	<p>Before wrap up -- and we've got one more tremendous speaker who we're going to hear from at our closing -- I just want to restate in just very simple and straightforward terms what's about to happen on the 23rd, because it's really important.</p>

	<p>We're rolling out a new Patient's Bill of Rights -- the Patient's Bill of Rights. And it's kicking in on September the 23rd. And there's a couple of aspects on it. You've heard it on this call, but I just want to make sure we say it again.</p>
Unjustified rescissions	<p>First and foremost, we're putting an end to what's called unjustified rescissions. Now, what that means is that insurance companies will no longer be able to cancel your coverage when you get sick just because of a mistake on your paperwork -- no more unjustified rescissions, starting September the 23rd. This is going to help about 11,000 Americans who are dropped from their coverage when they need it most. That's number one.</p>
Coverage up to age 26	<p>Number two, we're giving families peace of mind by making sure that parents can keep their kids on their coverage up to age 26. Up to age 26, most parents will be able to keep their children on their coverage. This affects over 2 million young adults who could gain coverage here. So, first we had no more rescissions because of the paperwork mistake. Second, we have ensuring that your coverage stays on for kids up to age 26.</p>
Preventive care	<p>Third, up to 88 million people are going to get preventive care they need because we're requiring insurers to cover recommended preventive services like mammograms and so forth. Up to 88 million people, because of this requirement for preventive services -- that, again, is a part of the Patient's Bill of Rights.</p>
Emergency room	<p>And then, fourth, we're banning insurance companies from -- from charging higher co-pays if they go to an emergency room -- if you go to an</p>

	<p>emergency room that's not in your network. From now on, if you go to an emergency room that's not in your network, you're not going -- the insurance companies are not going to be able to charge you more.</p>
Summary	<p>So, again, that's the Patient's Bill of Rights that we're making sure is implemented on September the 23rd: No more unjustified rescissions because of paperwork mistakes; young folks can stay on their parents' health insurance up to age 26 -- and we know how important that is as folks are looking for jobs and coming out of college and don't want to worry about health insurance; we also are making sure that preventive care is covered for recommended preventive services; and then finally, and lastly, we're not -- we're going to make sure that they can't charge you any more because you're going to an emergency room that's not in your network. The last thing you need to worry about in a time of emergency is getting charged more because of the emergency room you go to. And that's not going to happen anymore.</p> <p>So I just want to make sure that we boil it down to the brass tacks, there, and that you know what benefits are rolling out so that you can spread the word this coming weekend, and into the future.</p>
Information	<p>As we conclude -- friends, this has been a tremendous call. I'm -- I'm excited about the -- the information that's going out there. We've heard about specific protections in health reform. We've heard about folks who have resources that'll help you spread the word. We've heard from the president himself, who gave a very detailed and clear</p>

	<p>summary of -- of what's about to roll out. And we've heard from leaders around the country on what you're doing to bring health reform home to our families and our neighbors and our friends.</p>
Melody Barnes	<p>And I'm excited that, as we close, we're going to hear from one final voice -- someone who has spent her entire career fighting for working families, and is now leading President Obama's entire domestic-policy agenda. And that's my boss, Melody Barnes, the head of the White House Domestic Policy Council, who is going to close us out.</p> <p>So, Melody, with that, I'll pass it off to you.</p> <p>BARNES: Great. Thank you so much, Joshua. I appreciate that wonderful introduction.</p> <p>And to everyone on this call, on behalf of this administration, I want to thank you for joining us for this conversation. And I will be brief. There are just a couple of things I want to say.</p>
Victory for Americans	<p>One, I cannot stress enough that health reform wasn't a victory for this administration or for the Democratic Party. It was a victory for Americans. It was a victory for all the families who have had to forego a repair to the house, or parents who have had to look their kids in the eye and say, "I'm sorry, I can't afford camp because of out-of-control health-care costs."</p> <p>It was a victory for 20-somethings who had really big dreams, but had to struggle to get by because they were getting kicked off their parents' health insurance. And it was a victory for all Americans who feel like they had been working for their health insurance, but their health insurance wasn't working for them. This was a victory for America.</p>

	<p>And, given that, there are a few things that we have to do right now. And I really want to underscore what Joshua and Stephanie and Alexia and others on this call have been saying, and what many of you have been talking about in relationship to the people that you encounter on a daily or weekly basis.</p>
Patient's Bill of Rights	<p>We have to let all Americans know how they can take control of their health care, and take control of the benefits that are now available to them -- the kinds of benefits that Joshua was just talking about -- this Patient's Bill of Rights -- and other things that are going to flow out of the Affordable Care Act.</p>
Spread the word	<p>The president and his administration are counting on you to spread the word -- to inform your neighbors, to talk to other families, to talk to fellow clergy-people, to talk to fellow parishioners and others, your friends, about what you've heard on this call today, so that our communities can be healthier. If people don't know, they can't act on it, and they are not empowered to take control of their lives.</p> <p>So we really hope that you will work with us, and that you will do that, and continue to do the wonderful work that you've been doing.</p>
Ensuring health.	<p>So, again, on behalf of the president and all of my colleagues in the administration, thank you for your interest, for your hard work serving your community and this country, and for your help in ensuring the health of families around our country.</p> <p>I wish you all the best in the days ahead; and I look forward to our continuing partnership. Thank you so much for joining us, and have a good evening.</p>

SEPTEMBER 22, 2010 – FALLS CHURCH, VA. OBAMA HOLDS A BACKYARD DISCUSSION ON HEALTH CARE REFORM AND THE PATIENT’S BILL OF RIGHTS. 11:59 A.M. EDT

	<p>OBAMA: Thank you, everybody. Thank you. Well, it is great to see you. Thanks, all, for taking the time to be here. I know it’s a little warm under the sun, so if anybody at some point wants to shift their chairs into the shade, I’m fine with that. I won’t be insulted.</p> <p>I want to just make a couple of acknowledgments of people who are here. First of all, I’ve got the Secretary of Health and Human Services, so she’s charged with implementing the Affordable Care Act -- Kathleen Sebelius. She’s doing a great job -- former governor of Kansas, former insurance commissioner, knows all about this stuff. (Applause.) We’re very proud to have her on the team.</p> <p>Somebody who helped to champion the kinds of reforms and patients’ rights that we’re going to talk about here today -- Congressman Jim Moran is here. Thank you so much, Jim. (Applause.) And Falls Church Mayor Nader Baroukh. I was just mentioning Baroukh means “blessings” in Hebrew, one who’s blessed. And Barack means the same thing. So he and I, we’re right there. (Applause.) And I know he feels blessed to be the mayor of this wonderful town.</p>
Historic crisis	<p>When I came into office, obviously we were confronted with a historic crisis. The worst financial crisis since the Great Depression. We had lost 4 million jobs in the six months before I was sworn in, and we had lost almost 800,000 the month I was sworn in. Obviously the economy has been uppermost on our minds and I had to take a series of steps very quickly to make sure that we prevented the country from going into a second Great Depression, that the financial markets were stabilized. We’ve succeeded in doing that and now the economy is growing again.</p>

Unemployment	<p>But it's not growing as fast as it needs to and you still have millions of people who are unemployed out there. You still have hundreds of thousands of people who have lost their homes. There's a lot of anxiety and there's a lot of stress out there. And so, so much of our focus day to day is trying to figure out how do we just make sure that this recovery that we're slowly on starts accelerating in a way that helps folks all across the country.</p>
The lost decade	<p>But when I ran for office, I ran not just in anticipation of a crisis. I ran because middle-class families all across the country were seeing their security eroded, partly because between the years 2001 and 2009, wages actually went down for the average family by 5 percent. We had the slowest job growth of any time since World War II. The Wall Street Journal called it "the lost decade."</p>
Costs	<p>And part of the challenge for families was, is that even as their wages and incomes were flatlining, their costs of everything from college tuition to health care were skyrocketing.</p> <p>And so what we realized was we had to take some steps to start dealing with these underlying chronic problems that have confronted our economy for a very long time. And health care was one of those issues that we could no longer ignore.</p> <p>We couldn't ignore it because the cost of health care has been escalating faster than just about anything else, and I don't need to tell you all that. Even if you have health insurance, you've seen your copayments and your premiums skyrocket. Even if you get health care from your employer, that employer's costs have skyrocketed and they're starting to pass more and more of those costs onto their employees. More people don't get health care from their employers.</p> <p>And in addition, what you were seeing was that at the state level and at the federal level, the costs of health care, because people weren't getting it on the job and were trying to</p>

	<p>get it through the CHIP program or Medicaid or disability or what have you -- all those costs were driving our government bankrupt. Anybody who's out there who's concerned about the deficit, the single biggest driver of our deficit is the ever escalating cost of health care.</p> <p>So it was bankrupting families, companies, and our government. So we said we had to take this on.</p>
Preexisting condition	<p>And most of all, as I traveled around the country, I'd hear stories from families in every single state -- you know, they had a child who had a preexisting condition and they couldn't get health insurance. Or they thought they had insurance, only to find out that in the fine print, there was some sort of lifetime limit of the sort that Paul described. They bump against it, and suddenly they're out of luck and potentially going to lose their home or lose whatever savings they have because the insurance that they thought they were getting wasn't going to fully cover them.</p> <p>Some people would tell me stories about how just as they got sick the insurance company would have gone through their form and saw some innocuous mistake and just dropped their coverage because they hadn't listed -- in some extreme cases, we had folks who had a gall bladder problem 15 years ago that had nothing to do with the sickness that they were now experiencing, but the insurance company said, ah, you forgot to list that and so we're going to drop you from your insurance.</p> <p>I met young people all across the country who, starting off in life, getting their first job, weren't getting health insurance and couldn't stay on their parents' policies.</p>
Vulnerability	<p>So the amount of vulnerability that was out there was horrendous. And what I said to myself and what I said to my team was even as we were dealing with this big crisis -- immediate crisis with respect to the economy, we've got to</p>

	<p>start doing something to make sure that ordinary folks who are feeling insecure because of health care costs, that they get some relief.</p>
American Exceptionalism	<p>So the reason we're here today is that thanks to outstanding work by people like Jim, thanks to outstanding implementation by folks like Kathleen, we are now actually able to provide some help to the American people. Essentially, part of the Affordable Care Act that we can implement right now, and will take effect -- is it today or tomorrow? -- tomorrow -- see, Frances knows -- (laughter) -- that we can -- that will take effect tomorrow is the most important patient's Bill of Rights that we've ever seen in our history.</p>
Summary	<p>And let me just tick off some of the things that are going to be the case starting tomorrow.</p> <p>Number one: Paul already mentioned the issue of lifetime limits. That is not going to be the rule anymore after tomorrow. If you've got a policy, you get sick, the insurance company covers you.</p> <p>Number two: preexisting conditions for children. Children who have preexisting conditions are going to be covered.</p> <p>Number three: We're going to make sure that if young people don't have health insurance through their employer, that they can stay on their parents' health insurance up to the age of 26, which is obviously a huge relief for a lot of parents who are seeing their young people just coming out of college and not being able to get insurance.</p> <p>You're going to be able to make sure that the insurance company doesn't drop you because of an innocent mistake on your insurance form. This rule of rescission, they are not going to be able to drop you arbitrarily, which gives you more security.</p> <p>Number four: You're going to be able to choose your doctor and not have to go through some network in an emergency</p>

	<p>situation as a consequence of these rules, so it gives customers more choice and more options.</p> <p>There are so many good things about this, I may have forgotten one. Kathleen, anything else?</p> <p>SEBELIUS: (Inaudible) -- and preventive care.</p> <p>OBAMA: Right, and preventive care. I knew there was one more. Preventive care will now be offered under your policy, which, over the long term, can actually save people money because you get diagnosed quicker.</p>
Government	<p>So all these things are designed not to have government more involved in health care. They're designed to make sure that you have basic protections in your interactions with your insurance company; that you're getting what you pay for; that you have some basic measures of protection in interacting with the health care system, which means that you're not going to go bankrupt, you're not going to lose your house if, heaven forbid, you end up having an accident, and you're able to get the quality care that you need.</p>
Medicare	<p>Now, obviously there are a whole host of other things involved in the health care reforms that we initiated. Small businesses - - 4 million of them are going to get a huge tax break if they start providing health insurance to their employees. We've got measures that make sure that Medicare -- that the life of Medicare is extended. And in fact, we just got a report today that the Medicare Advantage program that we have modified and scrutinized more carefully, that in fact rates are going to be lower for that than they were before.</p>
State insurance	<p>I just met with state insurance commissioners from all across the country. They are newly empowered to look after consumers. And I'll just give you one example. In North Carolina, in part because of the new leverage that insurance commissioners have, the insurance commissioner there was able to get a \$125 million rebate for 200,000 customers in</p>

	<p>North Carolina. And they are seeing the lowest rate increases ever. All this is going to lower premiums. It's going to make health care more Affordable. It's going to give you more security. That's the concept behind what we're implementing.</p>
Examples	<p>But rather than me do all the talking, I want to make sure that some people who have struggled in the past with the health care system have an opportunity to tell their story, because basically the reason we did this was because of the stories I had heard from folks like you all across the country. And I want to make sure that a couple of you have a chance to tell your stories before I take some questions.</p>
Example	<p>So we're going to start with Dawn. Where's Dawn? Dawn's right here. Dawn's already got her own mic. Introduce yourself, Dawn, and tell us a little about yourself and your situation.</p> <p>MS. JOSEPHSON: Thank you. I'm Dawn Josephson from Jacksonville, Florida. And I've been a self-employed entrepreneur since 1998. During that time, the majority of those years I didn't even have insurance, because it was simply too expensive. In 2006, my son Wesley was born. This is Wesley.</p> <p>OBAMA: Hey, Wes. Come on over here.</p> <p>MS. JOSEPHSON: Go say hi. There you go.</p> <p>OBAMA: This is Wesley here.</p>
Example	<p>MS. JOSEPHSON: That's Wesley. He was born in 2006, and that's when we got -- we finally got health insurance. We've had a few different policies over the years, always had something excluded from it -- even something as silly as ear infections. What kid does not get ear infections? So, I mean, silly stuff.</p> <p>In July of '09, he had eye surgery. We discovered he had sudden onset of a condition called strabismus in the eyes, and his right eye needed surgery. So we had the surgery, and less</p>

	<p>than a year later we said we needed new insurance. What we had was killing us for our premium. And this was right around the time -- right after the act passed.</p> <p>The insurance company gave us an Affordable rate -- we were looking for a very Affordable plan. And when she told us we were approved, my immediate response was, "But what's not covered?" And I knew full well we were going to have an exclusion for my son's eye. And she said, "You're covered. Nothing is not covered." And I said, "Okay, I'm not being very clear here with my questioning. What about my son?" She said, "Yes, your son is covered." I said, "No, you don't understand. What if he needs another surgery on his eye? Are you going to pay for it?" They said, "Yes, he's covered." And I was shocked. And she said, "We can no longer exclude preexisting conditions for children."</p> <p>And it didn't hit me until later that night when I was talking with my husband as to why she said that, and we started talking about it. And I said, wow, something affected me personally from the government -- was really shocking.</p> <p>So not only do we have a more Affordable plan, but my son is now covered no matter what happens. It is routine for children with strabismus to need multiple surgeries. And I know now that that's not going to have to come out of our pocket, which was a big fear. So we're very thankful and very grateful. Thank you so much for everything you've done, President Obama, and everything that you've -- everyone has done to push this through because it's really made our life so much less stressful. It's just an average American family.</p> <p>OBAMA: That's a wonderful story. Thank you, Dawn.</p>
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Example	<p>Next, I want to talk to Gail, who flew down here from New Hampshire. And I had a chance to talk to Gail a couple of days ago. I had actually received -- a letter had been passed on to us from Gail's husband telling their story. And so I just was so touched by it. And it was wonderful to have a chance to speak to her personally. But, Gail?</p> <p>MS. O'BRIEN: That was awesome, too. You made my day. Yes, in March of this year, I was diagnosed with high-grade stage-two non- Hodgkin's Lymphoma, and I was uninsured. I work full-time as a preschool teacher at a Montessori school that does not offer insurance to their employees. So I was scared to death -- not as much, "Oh, I've got cancer, what am I going to do?" It was, "How am I going to pay for these outrageous bills that are going to come our way?"</p> <p>So then we would have to have gone into our retirement fund and used all that up, and we have one son in college and one on the way to college in two years. We would have had to use all the money that we saved for those to pay for my medical bills.</p> <p>And then when we heard about the high-risk pool and that it was in effect in July 1st, we got right onto it. We called people. We got all of the criteria in order so that we were actually insured on July 1st. My doctor let me wait for three months to start chemotherapy and radiation. And on July 5th I started chemo. And I am doing radiation right now. I'm feeling great. And if it wasn't for this bill, I would've probably not been feeling great, because I would've been so stressed out and worried about paying for my medical bills, that now I can focus on my health instead of focusing on how am I going to pay to get better.</p> <p>So I personally thank all of you and President Obama so much. I mean, you do not know how this has changed my life and how grateful I am to you.</p>
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<p>Children with preexisting conditions.</p>	<p>OBAMA: I really appreciate that. And I should have mentioned, just for Gail, children are -- with preexisting conditions -- are covered. We had to phase in the adult side of preexisting conditions because it's more complicated trying to get that whole pool of adults.</p> <p>But what we did in the interim -- by 2014 we're going to have in place a rule for insurance companies that they can't bar people -- anybody, not just kids, but anybody with preexisting conditions -- from getting insurance.</p> <p>But in that interim, over the next several years, over the next four years, we want to make sure that folks like Gail got help. And so we've set up these preexisting insurance pools, state by state. And Gail, I think, was the first person to sign up in New Hampshire. (Laughter.)</p>
	<p>MS. O'BRIEN: -- on the ball. (Laughter.)</p> <p>OBAMA: So we've got thousands of people across the country who are now signing up, and states are working with Kathleen's office to get this set up so that they're able to get the coverage they need in a way that's actually Affordable.</p> <p>I mean, in some cases you had situations where you could get, theoretically, insurance if you had a preexisting condition, but the costs were so exorbitant that it was just --</p> <p>MS. O'BRIEN: I couldn't even get insurance.</p> <p>OBAMA: -- it was just impossible. And then some people, in certain markets, you just couldn't get insurance at all. And so now we're able to provide an interim step that helps directly people like Gail, and we're really proud of that.</p> <p>So with that, what I want to do is I just want to open it up for any questions, comments, concerns that people have. We're focused mostly on health care, but if you want me to talk about what happened to the Redskins on Sunday, I can talk about that, too. (Laughter.)</p> <p>Yes. Here, and let's make sure everybody gets a mic so that</p>

	we can hear folks. And introduce yourself, if you don't mind.
Medication	<p>QUESTION: I'm very curious to know what can be done about the insurance companies and medication. As it stands now, the insurance companies rule when the doctors order. They either refuse, or it's a generic, or they have to go back to the doctor and argue with his office as to whether or not you can have it.</p> <p>OBAMA: Well, under Medicare, prescription drugs are covered under Part D. But for a lot of seniors, they still haven't been Affordable, even under Part D. And so one of the things that was part of the reform act was us slowly phasing out something called the doughnut hole, which I'm sure you're familiar with. Essentially, the way the thing was set up, when they set up the prescription drug plan program under Medicare under the previous administration, you were covered up to, what was it, a couple thousand -- \$3,000, \$2,000 -- then once you hit that threshold, there was a hole -- hence the term "doughnut hole" -- where you weren't covered for another several thousand dollars, and then it became so extreme that you had to still buy more drugs, then you would end up being covered again. So you had this doughnut hole. A lot of seniors fell into it.</p> <p>One of our main priorities was saying let's close the doughnut hole. And we are beginning to do that now, first by providing some supplemental assistance to seniors. A couple of million seniors have already received -- or is it about a million and a half seniors have already received checks of \$250.</p> <p>QUESTION: I was able to get my heart medication once that check got there.</p> <p>OBAMA: Well -- so you've already received it?</p> <p>QUESTION: Yes.</p> <p>OBAMA: And it helped you get some heart medication?</p>

	<p>QUESTION: Medicine I couldn't afford.</p> <p>OBAMA: Well, that's a wonderful story. And that's exactly what we want to make sure of is that you don't have to make decisions about do I get this medication or not.</p> <p>QUESTION: And I thank you from the bottom of my heart.</p> <p>OBAMA: Well, I appreciate that. But you're making, in addition to that, another point, which is that a lot of times there's a process of decision-making between doctors and Medicare about what drugs are going to be covered. And one of the things that Kathleen is trying to do is to make sure -- I don't want you to have to use your health care plan right now. (Laughter.) But one of the things that we want to do is to make sure that we're trying to figure out how can we simplify and make it easier to understand what prescription drug plans are out there so that you know ahead of time -- if you are primarily concerned about your heart condition and the drugs you need there, are you able to find the plan that you need that covers the drugs that your doctor is recommending. And that's something where I think we can still make some significant improvements.</p>
Reenrollment period for Medicare	<p>Kathleen, do you want to add something to that?</p> <p>SECRETARY SEBELIUS: Well, just as the President said, one of the things that will become clear when the new Medicare information comes out -- about the 8th of October you'll have a reenrollment period -- is I think two pieces of good news on the drug side. One is that we made plans be clearer about what drugs are covered so seniors can make the right choices. If you need heart medication or liver medication, you make sure you sign up for the right plan. In the past, that was very unclear.</p> <p>And secondly, starting in January, this year there was a one-time \$250 check. Next year a 50 percent decrease in all of the brand-name drugs in the doughnut hole will go into effect. And</p>

	<p>we received some good news from companies that every company is going to participate in that. So the kind of feature that begins to phase out the doughnut hole, it starts next year and half of it will be gone. And that's going to be a huge help. So \$250 didn't cover a lot of the drugs that you have to buy in the doughnut hole, but next year they will be essentially a 50 percent decrease. And that applies across the board to all companies. And Congressman, I know that was a big issue in the House and one that people felt very strongly had to be part of the Affordable Care Act, getting rid of the doughnut hole. The President certainly supported that. But it's going to be very good news. People said it would never happen and drug companies all stepped up and said, we will continue to participate, and yes, it will happen.</p> <p>OBAMA: Good. Yes.</p> <p>QUESTION: Hi, President Obama.</p> <p>OBAMA: How are you?</p>
Example	<p>QUESTION: Good. I'm a fourth-year medical student at Howard. And I'm of the people that has not been able to go the doctor, ironically, because I'm in medical school and I can't even go. So I just wanted to know what steps are we going to take after it's passed and goes into full effect to encourage young people to go see the doctor and to take preventative steps, just as older people? Because I feel like a lot of times we're left out.</p> <p>OBAMA: Well, first of all, as I said, up to the age of 26 you're going to be able to stay on your parents' coverage, and that's important for a lot of people. You look like you're, what, 22?</p> <p>QUESTION: Yes, I wish -- 24.</p> <p>OBAMA: Okay. (Laughter.) I mean, I wasn't that far off. "I wish." Let me tell you, 24 is just fine. (Laughter.) But -- so first of all, you'll be able to stay on your parents' policy for another couple years and that gives you obviously some peace of</p>

	mind.
Preventive care	The second thing that we're already doing is all the policies now are going to cover preventive care. So getting a mammogram, that's got to be part of your policy, and you no longer have to pay significant out-of-pocket costs that may dissuade you from getting the kind of preventive care that you need. And if you're a medical student, you know better than I do that so much of keeping ourselves healthy is knowing what's going on and going in and getting regular checkups and being able to monitor your health.
Obama's personal case	My mother died of ovarian cancer and she did not have steady health insurance during her life because she was essentially a self- employed consultant. And ovarian cancer is a tough cancer once you get it. It's tough mainly because it's typically diagnosed very late. Now, I can't say for certain that if she had been diagnosed earlier she might be with us here today, but I know that the fact that she did not have regular insurance meant that she was not getting the kinds of regular checkups that might have made a difference.
Preventive care	And so that's true for young people as well as old people, the provision that I just talked about -- preventive care. If you've got insurance, then those -- that preventive care is going to be covered and that should make a difference.
Free riders	And by the way, that should save us all a lot of money. I mean, one of the toughest things about this health care debate was -- and sometimes I fault myself for not having been able to make the case more clearly to the country -- we spend, each of us who have health insurance, spend about a thousand dollars of our premiums on somebody else's care. What happens is, you don't have health insurance, you go to the emergency room. You weren't getting a checkup; something that might have been curable with some antibiotics

	<p>isn't caught. By the time you get to the hospital, it's much more expensive. The hospital cares for you because doctors and nurses, they don't want to just turn somebody away. But they've got to figure out how do they keep their doors open if they're treating all these people coming in the emergency room.</p> <p>Well, what they do is they essentially pass on those costs in the form of higher premiums to the people who do have health insurance. And so we are already providing these subsidies, but it's the most inefficient possible subsidy we could provide. We're a lot better off if we are making sure that everybody is getting preventive care, we're encouraging wellness programs where people have access to doctors up front.</p>
Costs	<p>And that's why we feel pretty confident that over the long term, as a consequence of the Affordable Care Act, premiums are going to be lower than they would be otherwise; health care costs overall are going to be lower than they would be otherwise. And that means, by the way, that the deficit is going to be lower than it would be otherwise.</p> <p>Understand -- I want to make sure everybody is clear. The Congressional Budget Office, which is made -- is independent, it's historically bipartisan; this is sort of the scorekeeper in Washington about what things costs -- says that as a consequence of this act, the deficit is going to be over a trillion dollars lower over the course of the next two decades than it would be if this wasn't passed.</p>
Big government	<p>And the reason this is so important is because right now there's a political debate going on about should we maybe repeal the health care act or -- because this is part of big government. And you've heard the Republican leader in the House saying that's going to be one of our priorities -- chipping away at the health care act.</p> <p>Well, first of all, I want to see them come and talk to Gail or</p>

	<p>talk to Dawn or talk to any of you who now have more security as a consequence of this act, and I want them to look you in the eye and say, sorry, Gail, you can't buy health insurance; or, sorry, little Wes, he's going to be excluded when it comes to an eye operation that he might have to get in the future.</p>
AE	<p>I don't think that's what this country stands for. But what they're also going to have to explain is why would you want to repeal something that Congressional Budget Office says is going to save us a trillion dollars if you're serious about the deficit? It doesn't make sense. I mean, it makes sense in terms of politics. It doesn't -- and polls. It doesn't make sense in terms of actually making people's lives better.</p> <p>Okay. Anybody else? Yes, go ahead. Kathleen has got a mic.</p>
Question	<p>QUESTION: I want to thank you, first of all. I have a son with intractable seizures and this bill is going to make a huge difference in our lives personally. But I also want to speak on behalf of small business, because small business has been used as an argument against this bill and I find it very hard to understand. I think there's a huge campaign of misinformation. In fact, we were about ready to make a choice between not insuring our employees anymore because we simply couldn't afford it -- it was \$90,000 a year and a third of our payroll -- or close our doors because we had no choice anymore. And this bill and the tax increment that I get back takes that statistic from 30 to about 18 percent. It makes a massive difference in the fate of our business and in the fate of all of our employees who are insured. We did not want to drop our policy -- and in the fate of our son.</p> <p>And I guess my question is, what can we do about this misinformation? It seems so pervasive everywhere and it's so wrong. I think this bill is really Affordable for small business and I want some way to get that word out.</p> <p>OBAMA: Well, I appreciate that. Tell me what kind of business</p>

	<p>you got.</p> <p>QUESTION: I own a bookstore, "The King's English."</p> <p>OBAMA: Oh, do you?</p> <p>QUESTION: Yes, in Utah.</p> <p>OBAMA: That's wonderful.</p> <p>QUESTION: Thank you.</p> <p>OBAMA: I love bookstores.</p> <p>QUESTION: I know you do. I follow your career as you go from one to another.</p> <p>OBAMA: I used to be able to roam around in bookstores. Now it's a little more noticeable when I go in there.</p> <p>QUESTION: We read about it.</p> <p>OBAMA: And so you've been providing health insurance to your employees, but what you were seeing was because you're not Xerox or General Motors, you don't have this big pool, so you're essentially in the small-pool insurance market. And like the individual market, you were seeing your premiums just going up and up and up. What were they -- what was happening to them over the last several years?</p> <p>QUESTION: Well, in 2008, three of us hit 60. And of course, that's the place where they really go up. And our premiums shot up to well over 30 percent of our payroll, which shot our payroll up to 30 percent of our gross, which is totally unsustainable.</p> <p>OBAMA: Right. That's basically your margin.</p> <p>QUESTION: That's it -- way more than the margin.</p> <p>OBAMA: Way more -- right, I mean it eats up whatever profits that you're making.</p> <p>QUESTION: Yes.</p>
Tax reductions	<p>OBAMA: So as a consequence of the Affordable Care Act, we've got 4 million businesses like yours that are now eligible for significant tax reductions, that'll pay for up to a third of the premiums that you're paying for yourselves and your</p>

employees. I mean, that goes directly to a small business's bottom line.

Now, what you'll hear is, well, but some businesses, they're now mandated to provide insurance, and if I have to provide insurance, then I'm going to -- I'll hire fewer people. But it turns that actually -- and Kathleen will correct me if I'm wrong on the statistics here -- it turns out that because employers with 50 employees or less are not subject to any penalty for not providing health insurance, about 96 percent of small businesses, they don't have any requirement on them, but they can take advantage of it.

Now, it is true that if you've got a business that has a thousand employees and you're not providing them any insurance whatsoever, what we're saying is, you know what, that's not fair because all the rest of us are going to be paying for those folks when they go to the emergency room or they apply for Medicaid or what have you.

And so we're going to say, look, if you provide insurance we'll provide you help. If you don't, then we're going to charge you for the fact that somebody else is going to have to cover those costs. But for the vast majority of small businesses, this is a great deal. And we've got testimony here to show it.

Now, in terms of how to get the word out, nobody is more effective than you. So I hope that all the reporters who are here will record what you just said and will help get that word out. But it's a challenge, because, frankly, there was opposition from the Chamber of Commerce and some other small -- and some other large lobbying organizations in Washington that said they were speaking for small business, but when you looked at the facts this was good for small business.

In fact, probably nobody benefited more, because nobody is getting hurt more by health care costs than small business. So

	<p>thanks for sharing your story.</p> <p>OBAMA: Anyone else? I know it's warm out here, but I want to hear from as many people as I can. Go ahead.</p>
Question	<p>QUESTION: Hi. Thank you so much, Mr. President, for having us here. I want to thank you. I just have a comment. My son, Sammy, who was here, is seven and he has neurofibromatosis. I don't know, have you ever heard of it?</p> <p>OBAMA: You know, I've heard of it. But you should describe for us what that means.</p> <p>QUESTION: It means that he had a spontaneous mutation on his chromosome. And he was diagnosed two and a half years ago. And it just basically means your tumor suppressor doesn't work properly, so every nerve cell has the potential of becoming a tumor.</p> <p>OBAMA: Which is pretty nerve-wracking for mom.</p> <p>QUESTION: Oh, it's unbelievable. And there's a wide spectrum, so some people end up with minor complications but others have serious problems. And he's already had surgeries and things of that nature. So I just want to thank you and the Secretary and congressmen and senators, because it's life changing for a parent.</p> <p>OBAMA: Well, Sammy looks terrific. I saw him running around here.</p> <p>QUESTION: He is terrific.</p> <p>OBAMA: And I'm just glad to give you peace of mind. Look, people ask me sort of how do I stay calm in my job. The reason I stay calm in my job is that every night at six-thirty, no matter how busy I am, I go upstairs -- I've got a very short commute -- (laughter) -- and I go upstairs and I have dinner with my wife and my daughters. And as long as they're doing good, as long as they're healthy and happy and running around and telling me stories about the crazy things that happened at school today, then there's a certain baseline that</p>

	just gives you that sense, well, I can take anything, right?
Personal reference	<p>Now, the flipside is when Malia or Sasha get a sniffle, or an ear infection, or a scrape, or a bruise, I'm over there just miserable. And I still remember Sasha, when she was three months old, one night she just wasn't crying right. As a parent, you start recognizing, that's not how she cries. She wasn't hungry, it wasn't a diaper change. Something was going on.</p> <p>So we called our pediatrician, and he said, "Well, why don't you bring her down?" And this was in the middle of the night. This is like one o'clock in the morning. And he was willing to see her, and he pressed on top of her head, and he said, "You know, she may have meningitis; I want you to go to the emergency room."</p> <p>And it turned out she had meningitis, and she had to get a spinal tap, and they had to keep her there for three or four days. And the doctor was talking about if this didn't -- if her temperature didn't come down and if we didn't solve this, she could have permanent damage to her hearing or other effects. But I still remember that feeling of just desperation, watching the nurse take her away to provide treatment for her. But I was thinking, what if I hadn't had insurance? What if I was looking at my bank account and I didn't have the money to cover her? How would I be able to face my wife, and how would I be able to look in the mirror if I didn't feel like I could somehow make sure they were okay?</p> <p>And that's what this is about, ultimately. I mean, we've got to make sure that health care -- our health care dollars are used smartly. We've got to make the system work better for consumers. We've got to make it more responsive. But ultimately, the thing that's most important is, we've just got to give people some basic peace of mind. And I'm just so glad that I'm able to stand here before you and hear these stories, and hopefully it gives you a little more peace of mind.</p>

	<p>(Applause.)</p> <p>So, all right, well, thank you, everybody. Appreciate you. And if anybody else has any questions, they can come up and we can chat in the shade here. (Laughter.) Because I don't have to go right away, and maybe we can -- these guys will take some pictures. So thank you. END</p>
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	<p>JUNE 28TH, 2012. REMARKS BY THE PRESIDENT ON SUPREME COURT RULING ON THE AFFORDABLE CARE ACT. EAST ROOM – 12:15 P.M. EDT</p>
American exceptionalism	<p>THE PRESIDENT: Good afternoon. Earlier today, the Supreme Court upheld the constitutionality of the Affordable Care Act -- the name of the health care reform we passed two years ago. In doing so, they've reaffirmed a fundamental principle that here in America -- in the wealthiest nation on Earth – no illness or accident should lead to any family's financial ruin.</p>
Security – SCOTUS decision	<p>I know there will be a lot of discussion today about the politics of all this, about who won and who lost. That's how these things tend to be viewed here in Washington. But that discussion completely misses the point. Whatever the politics, today's decision was a victory for people all over this country whose lives will be more secure because of this law and the Supreme Court's decision to uphold it.</p>
American exceptionalism	<p>And because this law has a direct impact on so many Americans, I want to take this opportunity to talk about exactly what it means for you.</p>
Already have insurance	<p>First, if you're one of the more than 250 million Americans who already have health insurance, you will keep your health insurance -- this law will only make it more secure and more affordable.</p>

	<p>Insurance companies can no longer impose lifetime limits on the amount of care you receive. They can no longer discriminate against children with preexisting conditions. They can no longer drop your coverage if you get sick. They can no longer jack up your premiums without reason. They are required to provide free preventive care like check-ups and mammograms -- a provision that's already helped 54 million Americans with private insurance. And by this August, nearly 13 million of you will receive a rebate from your insurance company because it spent too much on things like administrative costs and CEO bonuses, and not enough on your health care.</p>
Young adults	<p>There's more. Because of the Affordable Care Act, young adults under the age of 26 are able to stay on their parent's health care plans -- a provision that's already helped 6 million young Americans. And because of the Affordable Care Act, seniors receive a discount on their prescription drugs -- a discount that's already saved more than 5 million seniors on Medicare about \$600 each.</p>
Middle class families	<p>All of this is happening because of the Affordable Care Act. These provisions provide common-sense protections for middle class families, and they enjoy broad popular support. And thanks to today's decision, all of these benefits and protections will continue for Americans who already have health insurance.</p>
Don't have States	<p>Now, if you're one of the 30 million Americans who don't yet have health insurance, starting in 2014 this law will offer you an array of quality, affordable, private health insurance plans to choose from. Each state will take the lead in designing their own menu of options, and if states can come up with even better ways of covering more people at the same quality and cost, this law allows them to do that, too. And I've asked Congress to help speed up that process, and give states this</p>

	flexibility in year one.
Exchanges Preexisting condition Women	Once states set up these health insurance marketplaces, known as exchanges, insurance companies will no longer be able to discriminate against any American with a preexisting health condition. They won't be able to charge you more just because you're a woman. They won't be able to bill you into bankruptcy. If you're sick, you'll finally have the same chance to get quality, affordable health care as everyone else. And if you can't afford the premiums, you'll receive a credit that helps pay for it.
Free riders	Today, the Supreme Court also upheld the principle that people who can afford health insurance should take the responsibility to buy health insurance. This is important for two reasons. First, when uninsured people who can afford coverage get sick, and show up at the emergency room for care, the rest of us end up paying for their care in the form of higher premiums. And second, if you ask insurance companies to cover people with preexisting conditions, but don't require people who can afford it to buy their own insurance, some folks might wait until they're sick to buy the care they need -- which would also drive up everybody else's premiums.
Individual mandate Romney	That's why, even though I knew it wouldn't be politically popular, and resisted the idea when I ran for this office, we ultimately included a provision in the Affordable Care Act that people who can afford to buy health insurance should take the responsibility to do so. In fact, this idea has enjoyed support from members of both parties, including the current Republican nominee for President.
Political meaning of individual mandate	Still, I know the debate over this law has been divisive. I respect the very real concerns that millions of Americans have shared. And I know a lot of coverage through this health care debate has focused on what it means politically.
AE	Well, it should be pretty clear by now that I didn't do this because it was good politics. I did it because I believed it was

		good for the country. I did it because I believed it was good for the American people.
Natoma Canfield		There's a framed letter that hangs in my office right now. It was sent to me during the health care debate by a woman named Natoma Canfield . For years and years, Natoma did everything right. She bought health insurance. She paid her premiums on time. But 18 years ago, Natoma was diagnosed with cancer. And even though she'd been cancer-free for more than a decade, her insurance company kept jacking up her rates, year after year. And despite her desire to keep her coverage -- despite her fears that she would get sick again -- she had to surrender her health insurance, and was forced to hang her fortunes on chance.
American exceptionalism		I carried Natoma's story with me every day of the fight to pass this law. It reminded me of all the Americans, all across the country, who have had to worry not only about getting sick, but about the cost of getting well. Natoma is well today. And because of this law, there are other Americans -- other sons and daughters, brothers and sisters, fathers and mothers -- who will not have to hang their fortunes on chance. These are the Americans for whom we passed this law.
Struggle to pass law	to	The highest Court in the land has now spoken. We will continue to implement this law. And we'll work together to improve on it where we can. But what we won't do -- what the country can't afford to do -- is refight the political battles of two years ago, or go back to the way things were.
AE		With today's announcement, it's time for us to move forward - - to implement and, where necessary, improve on this law. And now is the time to keep our focus on the most urgent challenge of our time : putting people back to work, paying down our debt, and building an economy where people can have confidence that if they work hard, they can get ahead.

Future	But today, I'm as confident as ever that when we look back five years from now, or 10 years from now, or 20 years from now, we'll be better off because we had the courage to pass this law and keep moving forward.
	Thank you. God bless you, and God bless America. END. 12:23 P.M. EDT

Appendix II – List of Speeches

Green – Energy and Environment

Blue – Health Care

Pink – Social Issues

Yellow – Court and Judiciary

Purple – Individualism

Speeches under a different heading / colour than health care make indirect reference to health care.

Energy and Environment	Jan 31, 2012	Obama delivers remarks before a Cabinet meeting
Health Care	Jan 31, 2012	Obama delivers remarks before a Cabinet meeting
Social Issues	Jan 31, 2012	Obama delivers remarks before a Cabinet meeting
Energy and Environment	Jan 26, 2012	Obama delivers remarks on energy at Buckley Air Force Base in Aurora, Colo.
Energy and Environment	Jan 25, 2011	Obama delivers State of the Union address
Health Care	Jan 28, 2011	Obama delivers remarks on the economy and health care at Families USA conference
Health Care	Jan 25, 2011	Obama delivers State of the Union Address
Social Issues	Jan 28, 2011	Obama delivers remarks on the economy and health care at Families USA conferece
Social Issues	Jan 25, 2011	Obama delivers State of the Union Address
Social Issues	Jan 12, 2011	Obama delivers remarks at a memorial event, “Together We Thrive: Tucson and America”; the First Lady also attends.
Courts and Judiciary	January 25,	Obama delivers State of the Union address

	2011	
Health Care	Jan 29, 2010	Obama speaks at House Republican retreat in Baltimore
Courts and Judiciary	Jan 27, 2010	Obama delivers State of the Union address
Energy and Environment	Jan 27, 2010	Obama delivers State of the Union address
Health Care	Jan 27, 2010	Obama delivers State of the Union address
Social Issues	Jan 27, 2010	Obama delivers State of the Union Address
Social Issues	Jan 16, 2010	Obama and former presidents Bill Clinton and George W. Bush on the recovery effort in Haiti.
Social Issues	Jan 15, 2010	Obama delivers remarks on latest Haiti relief efforts.
Social Issues	Jan 14, 2010	Obama makes remarks on the recovery effort in Haiti.
Social Issues	Jan 13, 2010	Obama delivers remarks on the earthquake in Haity
Energy and Environment	Jan 26, 2009	Obama announces plans to achieve energy independence.
Social Issues	Feb 2, 2012	Obama delivers remarks at the National Prayer Breakfast in Washington, DC.
Energy and Environment	Feb 16, 2011	Obama delivers remarks about the Great Outdoors initiative.
Social Issues	Feb 3, 2011	Obama delivers remarks at annual National Prayer Breakfast
Health Care	Feb 22,2010	Obama addresses nation's governors
Energy and Environment	Feb 16, 2010	Obama delivers remarks at a job training centre.
Social Issues	Feb 4, 2010	Obama delivers remarks at National Prayer Breakfast
Energy and Environment	Feb 3, 2010	Obama addresses nation's governors about energy policy.
Health Care	Feb 2, 2010	Obama speaks at town hall meeting in Nashua, N.H.

Energy and Environment	Feb 1, 2010	Obama delivers remarks on the budget
Energy and Environment	Feb 5, 2009	Obama speaks at Energy Department
Health Care	Feb 4, 2009	Obama delivers remarks at Signing of SCHIP Legislation
Energy and Environment	March 30, 2011	Obama delivers remarks on energy security.
Energy and Environment	March 11, 2011	Obama holds a news conference
Individualism	March 7, 2011	Obama and Australian prime minister Julia Gillard deliver remarks during a classroom visit in Arlington, Va.
Social Issues	March 2, 2011	Obama awards 2010 National Medal of Arts and National Humanities Medal.
Energy and Environment	March 31, 2010	Obama makes remarks on offshore drilling.
Social Issues	March 31, 2010	Obama delivers remarks at closing session of the Forum for Workplace Flexibility.
Health Care	March 23, 2010	Obama makes remarks at Interior Department on health-care bill
Health Care	March 23, 2010	Obama signs health-care bill into law
Health Care	March 21, 2010	Obama makes remarks after House passes health-care legislation
Health Care	March 19, 2010	Obama holds health-care rally in Fairfax, Va.
Health Care	March 15, 2010	Obama speaks on health-care reform in Strongsville, Ohio.
Health Care	March 10, 2010	Obama delivers remarks on health-care reform in Missouri.
Social Issues	March 10, 2010	Obama holds press availability with Haitian President.
Health Care	March 8, 2010	Obama delivers remarks on health insurance reform

Social Issues	March 8, 2010	Obama and the first lady make remarks honoring women's achievement.
Health Care	March 3, 2010	Obama urges Congress to "finish its work" on reform bill
Energy and Environment	March 2, 2010	Obama delivers remarks on the economy of Savannah, Ga.
Energy and Environment	March 23, 2009	Obama Delivers remarks on clean energy and technology
Energy and Environment	March 19, 2009	Obama speaks after tour of electric car plant.
Social Issues	March 11, 2009	Obama announces New White House Council on Women and Girls.
Social Issues	March 10, 2009	Obama Speaks to the U. S. Hispanic Chamber of Commerce
Social Issues	March 9, 2009	Obama addresses decision to lift embryonic stem cell limits.
Energy and Environment	March 3, 2009	Obama celebrates the interior department's 160th anniversary
Health Care	March 24, 2009	Obama's Press Conference
Health Care	March 9, 2009	Obama Addresses Decision to Lift Embryonic Stem Cell Limits
Health Care	March 5, 2009	Obama speaks at healthcare summit
Health Care	March 2, 2009	Obama taps Gov Kathleen Sebelus (D-Kan) to Lead HHS
Individualism	April 20, 2011	Obama delivers remarks at DNC event in San Francisco.
Energy and Environment	April 6, 2011	Obama holds a town hall on clean energy in Fairless Hills, Pa.
Social Issues	April 6, 2011	Obama delivers remarks at National Action Network Gala in NYC
Courts and Judiciary	April 9, 2010	Obama remarks on the retirement of Justice Stevens
Health Care	April 9, 2010	Obama is interviewed on Good Morning

		America
Energy and Environment	April 29, 2010	Obama delivers remarks at an event honoring the 2010 National Teacher of the Year.
Energy and Environment	April 27, 2010	Obama tours the Siemens Wind Turbine Blade Manufacturing Plant.
Social Issues	April 25, 2010	Obama gives eulogy at service for miners in West Virginia.
Energy and Environment	April 16, 2010	Obama delivers remarks at the White House Conference on America's Great Outdoors.
Energy and Environment	April 15, 2010	Obama delivers remarks on mine safety.
Social Issues	April 15, 2010	Obama delivers remarks on mine safety.
Social Issues	April 9, 2010	Obama remarks on retirement of Justice Stevens.
Social Issues	April 6, 2010	Obama makes remarks at Easter Prayer Breakfast.
Health Care	April 28, 2009	Obama remarks on the swearing-in ceremony for Sebelius
Health Care	April 9, 2009	Obama delivers remarks on Veterans Health Care
Social Issues	April 21, 2009	Obama delivers remarks at signing of Edward Kennedy Service America Act.
Energy and Environment	May 6, 2011	Obama delivers remarks to workers at Allison Transmission Headquarters in Indianapolis, Ind.
Social Issues	May 19, 2011	Obama delivers remarks at Women's Leadership Forum
Individualism	May 18, 2011	Obama delivers remarks at a DNC event in Boston, Mass.
Social Issues	May 17, 2011	Obama delivers remarks on Jewish American Heritage Month
Social Issues	May 12, 2011	Obama delivers remarks at the National Hispanic Prayer Breakfast

Social Issues	May 4, 2011	Obama delivers remarks on the Wounded Warrior's Soldier Ride
Energy and Environment	May 28, 2010	Obama delivers a statement to the press after meeting with Thad Allen
Social Issues	May 27, 2010	Obama makes remarks at a reception in honour of Jewish American Heritage Month.
Energy and Environment	May 27, 2010	Obama delivers remarks and takes questions from the press.
Social Issues	May 24, 2010	Obama makes remarks at a reception to celebrate Asian American and Pacific Islander Heritage month.
Energy and Environment	May 21, 2010	Obama delivers remarks and signs a Presidential Memorandum outlining the next steps in his vision for cleaner, more efficient vehicle.
Energy and Environment	May 14, 2010	Obama makes a statement to the press about the oil spill meeting
Energy and Environment	May 19, 2009	Obama Delivers Remarks on Fuel Efficiency Standards.
Courts and Judiciary	May 10, 2010	Obama announces nomination of Elena Kagan to be Supreme Court Justice
Health Care	May 5, 2010	Obama delivers remarks and signs the Caregivers and Veterans Omnibus Health Services Act
Courts and Judiciary	May 26, 2009	Obama announces Sonia Sotomayor as Supreme Court Nominee.
Health Care	May 11, 2009	Obama delivers remarks on health care costs
Energy and Environment	June 13, 2011	Obama delivers remarks on economy in Durham, N. C.
Social Issues	June 29, 2011	Obama delivers remarks on LGBT Pride Month
Social Issues	June 29, 2011	Obama holds a news conference
Social Issues	June 15, 2011	Obama delivers remarks to military fathers and their children

Courts and Judiciary	June 22, 2010	Obama remarks after cabinet meeting
Energy and Environment	June 22, 2010	Obama remarks after cabinet meeting
Health Care	June 22, 2010	Obama remarks after cabinet meeting
Health Care	June 22, 2010	Obama remarks on Affordable Care Act
Social Issues	June 22, 2010	Obama remarks after cabinet meeting
Social Issues	June 21, 2010	Obama delivers remarks on Fatherhood.
Energy and Environment	June 16, 2010	Obama remarks after meeting with BP execs.
Health Care	June 16, 2010	Obama remarks to the American Nurses Association
Energy and Environment	June 15, 2010	Obama remarks from Oval Office on BP oil spill
Energy and Environment	June 15, 2010	Obama makes remarks after a briefing with Admiral Allen and local officials on efforts to fight the BP oil spill
Energy and Environment	June 14, 2010	Obama delivers a statement to the press
Energy and Environment	June 10, 2010	Obama speaks after meeting with partisan members of Congress
Health Care	June 8, 2010	Obama holds Tele Town Hall meeting with seniors.
Energy and Environment	June 7, 2010	Obama makes remarks after meeting with Cabinet Members to discuss the administration's response to the BP Deepwater Horizon oil spill
Energy and Environment	June 1, 2010	Obama delivers a statement to the press following meeting with BP Oil Spill Commission Co-Chairs.
Energy and Environment	June 29, 2009	Obama delivers remarks on energy
Health Care	June 23, 2009	Obama holds press conference: opens with discussion on health-care, Iranian elections and

		energy policy.
Health Care	June 22, 2009	Obama delivers remarks at the signing of the family smoking prevention and tobacco control Act.
Health Care	June 22, 2009	Obama addresses seniors and prescription drugs
Health Care	June 16, 2009	Obama CNBC interview with John Harwood
Health Care	June 15, 2009	Obama delivers remarks on Health Care Reform and the American Medical Association's Annual Meeting in Chicago.
Health Care	June 12, 2009	Obama delivers remarks on Tobacco Legislation
Health Care	June 11, 2009	Obama holds town hall on health care
Social Issues	June 30, 2009	Obama delivers remarks on Nonprofit programs
Social Issues	June 22, 2009	Obama delivers remarks at the signing of the Family Smoking Preventino and Tobacco Control Act.
Social Issues	June 19, 2009	Obama delivers remarks at the Esperanza National Prayer Breakfast
Social Issues	June 17, 2009	Obama delivers remarks on federal benefits and non-discrimination.
Energy and Environment	June 29, 2011	Obama delivers remarks on fuel-efficiency standards
Social Issues	July 25, 2011	Obama delivers remarks at the 2011 National Council of La Raza annual conference
Individualism	July 6, 2011	Obama holds Twitter townhall meeting
Energy and Environment	July 16, 2010	Obama delivers remarks to the press on progress in the Gulf
Energy and Environment	July 15, 2010	Obama delivers remarks on investing in clean energy
Social Issues	July 29, 2010	Obama delivers remarks and signs Tribal Law and Order Act
Social Issues	July 26, 2010	Obama delivers remarks on 20th Anniversary

		of the Americans with Disabilities Act.
Social Issues	July 13, 2010	Obama delivers remarks on the National HIV/AIDS Strategy
Energy and Environment	July 2, 2009	Obama delivers remarks about innovation and jobs.
Health Care	July 21, 2009	Obama delivers remarks on health-care reform
Health Care	July 17, 2009	Obama addresses concerns over health-care costs
Social Issues	July 16, 2009	Obama delivers speech at NAACP Centennial Convention.
Health Care	July 13, 2009	Obama delivers remarks on the HIV/AIDS Strategy
Health Care	July 13, 2009	Obama announces surgeon general nominee
Social Issues	Aug 10, 2011	Obama delivers remarks at Iftar dinner celebrating Ramadan
Social Issues	Aug 4, 2010	Obama delivers remarks and present the 2010 Citizens Medal to 13 winners from across the country.
Social Issues	Aug 3, 2010	Obama hosts townhall with young African leaders.
Courts and Judiciary	August 6, 2010	Obama delivers remarks at the reception for Elena Kagan
Social Issues	August 29, 2010	Obama delivers remarks on the fifth anniversary of Hurricane Katrina
Energy and Environment	Aug 30, 2010	Obama interview with NBC's Brian Williams
Health Care	Aug 30, 2010	Obama interview with NBC's Brian Williams
Social Issues	Aug 30, 2010	Obama interview with NBC's Brian Williams
Energy and Environment	Aug 14, 2010	Obama delivers a statement to the press on Gulf Coast Recovery
Social Issues	Aug 13, 2010	Obama remarks during Iftar dinner at The White House.
Health Care	Aug 20, 2009	Obama delivers remarks at Organizing for

		America's National Health Care Forum
Health Care	Aug 11, 2009	Obama delivers remarks on health care at N. H. Town Hall Meeting
Social Issues	Sept 24, 2011	Obama delivers remarks at Congressional Black Caucus Foundation's Annual Phoenix Awards
Social Issues	Sept 14, 2011	Obama delivers remarks at the Congressional Hispanic Caucus Institute 34th Awards Gala in Washington, D.C.
Energy and Environment	Sept 15, 2010	Obama holds a cabinet meeting (press availability)
Health Care	Sept 15, 2010	Obama holds a cabinet meeting (press availability)
Social Issues	Sept 15, 2010	Obama holds a cabinet meeting (press availability)
Social Issues	Sept 15, 2010	Obama and the first lady attend the Congressional Hispanic Caucus Institute's 33rd Annual Awards Gala; Obama delivers remarks.
Social Issues	Sept 18, 2010	Obama delivers at the Congressional Black Caucus Foundation Inc.'s Annual Legislative Confernece Phoenix Awards Dinner.
Health Care	Sept 22, 2010	Obama holds a backyard discussion on health care reform and the Patient's Bill of Rights.
Health Care	Sept 21, 2010	Obama holds teleconference on the Affordable Care Act
Energy and Environment	Sept 22, 2009	Obama Addresses Climate Change at the U. N.
Health Care	Sept 10, 2009	Obama addresses Health Insurance Reform
Health Care	Sept 9, 2009	Obama's address to Joint Session of Congress on Health Care
Health Care	Sept 1, 2009	Obama delivers remarks on swine flu
Social Issues	Sept 11, 2009	Obama delivers remarks at Pentagon on Eighth Anniversary of Sept. 11

Individualism	Sept 9, 2009	Obama's Address to a Joint Session of Congress on Health Care.
Social Issues	Oct 1, 2011	Obama delivers remarks at the Human Rights Campaign's 15th Annual National Dinner
Individualism	Oct 25, 2011	Obama delivers remarks at a campaign event in San Francisco.
Individualism	Oct 4, 2011	Obama delivers remarks at a campaign event in St. Louis, Mo.
Social Issues	Oct 21, 2010	Obama holds a discussion on women and the economy
Social Issues	Oct 19, 2010	Excellence for Hispanics
Social Issues	Oct 5, 2010	Obama delivers remarks to the 2010 Fortune Most Powerful Women Summit
Energy and Environment	Oct 27, 2009	Obama delivers remarks at social energy centre
Health Care	Oct 22, 2009	Obama delivers remarks at signing of Veterans Health-care Budget Reform and Transparency Act
Health Care	Oct 13, 2009	Obama Delivers Remarks after Senate Finance Committee Passes Health-Care Bill
Health Care	Oct 5, 2009	Obama delivers remarks to doctors on Health Insurance Reform
Social Issues	Oct 28, 2009	Obama delivers remarks at enactment of Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act.
Social Issues	Oct 9, 2009	Obama Accepts Nobel Peace Prize.
Social Issues	Nov 9, 2011	Obama delivers remarks at African American Policy in Action Leadership Conference.
Energy and Environment	Nov 4, 2010	Obama and Biden attend a Cabinet meeting
Health Care	Nov 4, 2010	Obama and Biden attend a Cabinet meeting
Social Issues	Nov 4, 2010	Obama and Biden attend a Cabinet meeting
Energy and	Nov 7, 2010	Obama interview with 60 Minutes

Environment		
Health Care	Nov 7, 2010	Obama interview with 60 Minutes
Energy and Environment	Nov 24, 2009	Obama welcomes Indian Prime Minister Manmohon Singh to the White House.
Health Care	Nov 8, 2009	Obama statement on House health-reform legislation, Iraq election law
Social Issues	Nov 5, 2009	Obama delivers remarks on Ft. Hood shooting at end of tribal leaders conference.
Social Issues	Dec 16, 2011	Obama delivers remarks at the White House Tribal Nations Conference.
Social Issues	Dec 2, 2011	Obama delivers remarks at the White House Tribal Nations Conference.
Social Issues	Dec 1, 2011	Obama delivers remarks at a World AIDS Day event.
Social Issues	Dec 22, 2011	Obama delivers remarks and signs the Don't Ask, Don't Tell Repeal Act of 2010
Social Issues	Dec 16, 2011	Obama delivers remarks at the 71st General Assembly of the Union for Reform Judaism.
Individualism	Dec 6, 2011	Obama delivers remarks on the economy of Osawatomie, Kansas.
Social Issues	Dec 13, 2010	Obama signs the Healthy, Hunger-Free Kids Act of 2010; Obama and the First Lady deliver remarks.
Social Issues	Dec 10, 2010	Obama and Bill Clinton hold White House press conference
Social Issues	Dec 8, 2010	Obama signs the Claims Resolution Act of 2010
Health Care	Dec 10, 2010	Obama and Bill Clinton hold White House press conference
Energy and Environment	Dec 18, 2009	Obama delivers remarks at opening plenary session of UN Climate Change Conference.
Energy and Environment	Dec 15, 2009	Obama delivers remarks on the economic impact of energy saving home retrofits.

Health Care	Dec 24, 2009	Obama remarks on Senate passage of health-care legislation
Health Care	Dec 15, 2009	Obama delivers remarks after meeting with Senate Democratic Caucus

Appendix III

Patient Protection and Affordable Care Act (Public Law 111-148), n° 1501 (b), 124 Stat. 119, 244 (2010)

TITLE I – QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

TITLE II – ROLE OF PUBLIC PROGRAMS

Subtitle F – Medicaid Prescription Drug Coverage

Sec. 2501. Prescription drug rebates.

Sec. 2502. Elimination of exclusion of coverage of certain drugs.

Sec. 2503. Providing adequate pharmacy reimbursement.

TITLE III – IMPROVING THE QUALITY AND EFFICIENCY OF HEALTH CARE

Subtitle B – Improving Medicare for Patients and Providers.

PART I – ENSURING BENEFICIARY ACCESS TO PHYSICIAN CARE AND OTHER SERVICES.

Sec. 3109. Exemption of certain pharmacies from accreditation requirements.

Subtitle D – Medicare Part D Improvements for Prescription Drug Plans and MAPD Plans.

Sec. 3303. Voluntary de minimis policy for subsidy eligible individuals under prescription drug plans and MA-PD plans.

Sec. 3305. Improved information for subsidy eligible individuals reassigned to prescription drug plans and MA-PD plans.

Sec. 3307. Improving formulary requirements for prescription drug plans and MA-PD plans with respect to certain categories or classes of drugs.

Sec. 3310. Reducing wasteful dispensing of outpatient prescription drugs in long-term care facilities under prescription drug plans and MA-PD plans.

Sec. 3311. Improved Medicare prescription drug plan and MA-PD plan complaint system.

Sec. 3312. Uniform exceptions and appeals process for prescription drug plans and MA-PD plans.

Sec. 3314. Including costs incurred by AIDS drug assistance programs and Indian Health Service in providing prescription drugs towards the annual out-of-pocket threshold under part D.

Subtitle F – Health Care Quality Improvements

Sec. 3507. Presentation of prescription drug benefit and risk information.

TITLE IV – PREVENTION OF CHRONIC DISEASE AND IMPROVING PUBLIC HEALTH

TITLE V – HEALTH CARE WORKFORCE

TITLE VI – TRANSPARENCY AND PROGRAM INTEGRITY

TITLE VII – IMPROVING ACCESS TO INNOVATE MEDICAL THERAPIES

TITLE VIII – CLASS ACT

TITLE IX – REVENUE PROVISIONS

TITLE X – STRENGTHENING QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Health Care and Education Reconciliation Act of 2010 (Public Law 111-152)

Subtitle B – Medicare

Sec. 1101. Closing the medicare prescription drug “donut hole” [substitutes for section 3315 of PPACA]

Subtitle C – Medicaid

Sec. 1206. Drug rebates for new formulations of existing drugs [amendment fully incorporated into PPACA].

Subtitle E – Provisions Relating to Revenue

Sec. 1403. Delay of limitation on health flexible spending arrangements under cafeteria plans [amendments fully incorporated into PPACA]

TITLE II – EDUCATION AND HEALTH

Subtitle B – Health

Sec. 2302. Drugs purchased by covered entities.

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Summary

The Rhetoric of American Exceptionalism in Obama's Speeches on Health Care Reform

This thesis analyzes the use by President Obama of American exceptionalism in his speeches to show the American people that the health care reform is not against those typical American values which according to experts make the United States an exceptional land. The reform was achieved through the passing of the Patient Protection and Affordable Care Act of 2010. As all major health care reforms preceding this one, its passing was not easy and the economic circumstances surrounding it made it even more difficult. The GOP together with those opposing the expansion of federal powers were of the opinion that enhancing entitlements was not the most efficient means to tackle the economic crisis. Others in favour of the Law argue that history proves this notion wrong, e.g. the 1935 Social Security Act was passed in the midst of the worst economic depression so far as yet known.

Each chapter answers the questions posed by the previous one and poses questions answered in the next. Each chapter combines both theoretical content and content based on facts.

The following is a detailed account of the contents of each chapter:

Chapter 1: *What is American Exceptionalism?* provides the prime theoretical content of the whole thesis by examining the concept of American exceptionalism: it explores the origin of the term, how this concept was brought into being and further used from John Winthrop, a Puritan settler, to President Obama. It describes how it has been equally used by politicians and academics to conform an American creed which feeds on and contributes to the idea of American exceptionalism. Finally, it examines the content of the term – its main tenets: liberty, egalitarianism, individualism, populism and laissez-faire. Obama uses them in his speeches to relate to his audience and empathise with his fellow Americans when he insists that health reform is necessary and that the one established in the PPACA follows tradition.

From a methodological point of view, this chapter serves to identify the aspects that will be taken into account in the analysis of the speeches.

Chapters 2 to 5 serve as background information for the rest of the chapters.

Chapter 2: *Health Care in the United States* uses statistics to describe the unsustainable situation of health care in the United States, basically, the high number of uninsured, the lack of health insurance, poor

life expectancy and child mortality rates and the high price of health care and health care spending. The deleterious situation of health care is especially grievous for the uninsured and free riders (a.k.a. voluntary opt-outs) though the consequences affect the economy in general. Following Lipset's methodology, the statistics compare the US to other OECD countries to show that though medical spending is much higher than other countries', the US has made a poor job in distributing health benefits.

Chapter 3: *The Need to Reform* reflects the discussion on the need for reform regardless of the two different political positions around the subject: to reform or not. It describes the different views on how to carry it out; whether implementing universal coverage is necessary; and the several failed attempts to do so in the past. It starts by carrying out an assessment of the American health care system to reason that its reform is a must since the current costs are unsustainable: "Today we are spending over \$2 trillion a year on health care – almost 50 per cent more per person than the next most costly nation."⁸³⁹ It also explores how it is tackled financially and the ancillary reforms that need to be implemented along the financial one, such as the need to control costs by preventing unlawful practices by insurance companies. The chapter also explores the different alternatives to reform and focuses on the one that was chosen and is currently being implemented: that which aims at attaining universal coverage. This objective has been on the governments agenda before (from the efforts by F.D. Roosevelt to President Clinton's) but attempts have unavoidably failed

⁸³⁹ Obama's Speech on Health Care Reform at the American Medical Association's Annual Conference, as released by the White House, Washington, D.C., June 15, 2009.

given the stakeholders involved in the process and the years of underinvestment. This time the current situation is different since for the first time the insurance companies are not entirely against reform.

Chapter 4: *Theoretical Background to Reform* leaves aside constitutional and economic reasons to reform and explores the moral imperative and high-minded moral values and concepts such as socialized medicine and welfare. It analyses the ideological background used in the speeches to push it forward by deepening into the moral reason to reform: basically, universal coverage is a moral imperative since “it is the ethical obligation of society to provide equal health care to everyone.”⁸⁴⁰ This in effect is nothing but a consequence of the solidarity that is predicated of the American character. The chapter explores the ideological background used in the past to thwart attempts to reform. Opponents of the law view solidarity as another word for socialized medicine which has a history of mistrust in the United States and has therefore been used by them to claim that health care reform goes against the mentioned American creed, specifically, its individualism.

The chapter also examines the speeches to prove how Obama steers the moral strategy depending on the circumstances. The President was forced to shift his initial strategy which emphasized the moral duty towards the uninsured to a utilitarian one since reform could only be accomplished with the support from the insurance sector. Hence, his

⁸⁴⁰ Pariser, op. cit. David M. Pariser, “Ethical considerations in health care reform: Pros and cons of the Affordable Care Act”, *Elsevier*, 2012.

strategy, his ethics have been described as “craft ethics” and criticized for it by his political opponents.

Chapter 5: *Government Role in Providing Health Care* describes the entity in charge of reforming, i.e. the government; and the many reasons why it has always found so many impediments to carry it out.

The chapter begins by ascertaining how large the government’s role is in providing health care services to the people. OECD data is conclusive: the United States is exceptional in the level of social procurement given the size of its GDP. This is due at large to the fact that the United States has failed to create a comprehensive system of government-funded health care. The chapter goes through the history of this failure and the numerous attempts to implement a system of universal coverage. It also analyses the reasons why there is no national health care: the distrust of government, the structure of the Federal State and its institutions, its anti-statist political culture, the absence of a working-class movement nor a labour-based political party, the racial politics of the South which feared that federal provision of health care services would entail the integration of existing services and finally, the powerful special interests such as the AMA which lobbied against any attempt at reform in the past. The chapter ends with an explanation on how so many elements against government-procurement of health care services has been countered thanks to the passing of what has been called “superstatutes” a.k.a. *de facto* constitutional amendments. The PPACA is clearly one of them: it is meant to be a step towards a presence of government in providing health care.

Chapters 6 to 10 explore the reform carried out by the PPACA.

Chapter 6: *Reform comes with the PPACA* analyses reform as envisaged by the PPACA from the point of view of the American exceptionalism. It describes the context of economic recession when it was passed and the legislative hurdles it had to overcome till the day it became an Act, a historic day indeed. It highlights why it is an exceptional law; how it relates to American exceptionalism. It also explores the different reactions when it was passed: both of praise and criticism. The implementation of the reform the Law envisages is partly still on paper and given both the Bill's history of extreme partisanship till the Law became a reality and the polarization of the current political arena prospects are not good, the future is not alluring.

Chapter 7: *The Individual Mandate* studies the core of the controversy surrounding the PPACA i.e. the individual mandate. It explores the diverse explanations used to prove its questioned constitutionality in terms of concepts belonging to American exceptionalism. Obama does not use the actual words and prefers to use "personal responsibility" instead. Such responsibility has paid off since many population groups are already benefiting from the Law: free riders,⁸⁴¹ middle class families, the sick and poor, the uninsured, young adults and women. This chapter establishes the relation between the individual mandate and universal coverage. The former is the means to attain the objective of universal coverage by making health care accessible. Hence the name of the Act.

⁸⁴¹ Free riders can afford a health insurance plan but will rather run the risk of not having it giving thus priority to other expenses.

Chapter 8: *The PPACA and Access to Health Insurance*

examines the relevance of the individual mandate when dealing with the problem of the high number of uninsured and free riders. The public option in the form of exchanges is envisaged to provide them with health care. It constitutes an option for those who do not have health insurance. Experts agree on the need to have them join the market as an efficient means to end the effects of adverse selection on those that do count with insurance that have to indirectly pay for the expenses of those who don't when they fall ill. The public option stops the increase in health insurance premiums to compensate for the expenses accrued by the free rider when s/he needs health insurance.

This chapter also explores the effects of the expansion of coverage under Medicaid and the controversy arising from it: expansion of this programme makes it accessible to sixteen million Americans but it depends on the States' decision to implement such expansion. This last caveat was an object of contention that was finally decided by the Supreme Court of Justice who established that States could not be forced to participate in the said programme. Hence the different degree of implementation among States, for instance, between New York, a real pioneer in the Law's implementation and Texas, reluctant yet to accept the full effects of the Law. The relationship between the Federation and the States is another element which explains the distrust of government which lies at the core of American exceptionalism.

Both mechanisms, individual mandate and expansion of Medicaid were contested before the SCOTUS.

Chapters 9 and 10 deal with individual rights.

Chapter 9: *Individual Rights and Distrust of Government* analyses the concept of distrust of government and its counterpoint, individualism. The root of these rights, individualism and distrust of government, constitute the core of the American creed and constitute the theoretical framework of discussions on the constitutionality of the PPACA. Both elements are studied by experts on American individualism as deeply-ingrained values in America's culture. The speeches reflect the two opposing points of view: those against the PPACA claim that the individual mandate seems to target individualism in favour of an unprecedented and unacceptable expansion of government. Big government ends up putting individual rights at risk. Those in favour respond to this by saying that the individual's right not to purchase insurance comes at a price since in the long run the decision not to contribute to the system negatively affects both the individual who does have insurance and the health care market which must cope with the effects of adverse selection. It is thanks to the collective action of those that do contribute by paying monthly premiums that the free rider gets treatment when s/he needs it. Moreover, some situations, like that of health care can only be tackled by the all-encompassing hand of government and it cannot be left to the individual States much less to the specific interest of each stakeholder (insurance companies, physicians, hospitals, pharmaceutical companies, patients).

Chapter 10: *The PPACA's Patient's Bill of Rights* serves as a nice denouement to this work. It describes yet another ground-breaking achievement envisaged by the PPACA: the indirect establishment of a bill of

rights for patients to curtail the legal but unlawful and certainly unethical practices by insurance companies exerted on patients such as unjustified rescissions or charging extra to patients that go to an emergency room that is not part of their network. Examples of new entitlements are the fact that youngsters up to the age of 26 will be on the coverage of their parents and the right to receive preventive medicine treatments. All these measures contribute to meeting the requirements established by international law on the right to health (General Comment 14 by the Economic and Social Council of the United Nations, 25 April-12 May 2000).

Conclusion: This thesis proves that the President uses American exceptionalism to convince the people that the PPACA, especially its individual mandate, is not against tradition but quite the contrary, it is in tune with all those measures that are taken to improve the lives of Americans. The concepts behind the idea of American exceptionalism (individualism, distrust of government, solidarity, socialized medicine) are used by either political party in dispute to claim that measures established by the Law are in tune or against tradition. For instance, the individual mandate for the common Joe Doe is an entitlement to get insurance. Those in favour of such entitlement will claim that it follows tradition since the U.S. is a country which has never let down the people in need and so government must provide solutions to pursue one of the goals established in the Declaration of Independence: the pursuit of happiness.⁸⁴² Surely the

⁸⁴² Thomas Jefferson summarized the basic liberties in the Declaration of Independence (July 4th, 1776): "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

objectives established by the PPACA are in perfect accordance with the latter.

Those against such entitlement will claim that the mandate is against a tradition of individualism where every person is responsible for its own well-being and will accept no intrusion of government precisely in the individual pursuit of happiness.

Documentación en español

Presentada por Carmen Serrano Lanzuela

Para la obtención del título de Doctor Europeo

2013

La retórica del excepcionalismo en los discursos de

Obama sobre la reforma sanitaria

Resumen

La retórica del excepcionalismo americano en los discursos de Obama sobre la reforma sanitaria

Esta tesis analiza el uso por el Presidente Obama del Excepcionalismo Americano en sus discursos para demostrar al pueblo americano que la reforma sanitaria no está en contra de aquellos valores típicamente americanos que según los expertos en el Excepcionalismo hacen de los Estados Unidos un país excepcional. La reforma fue llevada a cabo a través de la aprobación de la *Ley de protección del paciente y cuidado asequible* en 2010. Como toda gran reforma de la sanidad llevada a cabo hasta ahora, su aprobación no fue fácil y las circunstancias económicas que la rodearon hicieron su aprobación todavía más difícil. El partido republicano junto con los opositores a la expansión del poder federal consideraban que el aumento de los derechos sociales no era la manera más eficaz de atajar la crisis económica. Otros a favor de la Ley argumentaban que la historia prueba que es falsa esta noción dado que, por ejemplo, la primera Ley de Seguridad Social (1935) fue aprobada en medio de la peor depresión económica hasta entonces conocida.

Cada capítulo responde a cuestiones planteadas en el anterior y plantea cuestiones respondidas en el siguiente. Asimismo comprende el contenido teórico y a la vez el contenido basado en hechos.

A continuación sigue un resumen detallado de cada capítulo:

El capítulo 1: *¿Qué es el excepcionalismo americano?* proporciona el contenido teórico primordial para toda la tesis al examinar brevemente el concepto de excepcionalismo americano: se describe el desarrollo de este concepto, usado desde John Winthrop, uno de los padres fundadores, hasta el propio Presidente Obama, y por políticos y estudiosos para conformar un credo americano que se alimenta y contribuye a la formación de la propia idea de excepcionalismo americano. Principios fundamentales de tal credo son libertad, igualdad, individualismo, populismo y *laissez-faire*. Obama los usa en sus discursos para conectar con su audiencia y empatizar con sus compatriotas cuando insiste en que la reforma sanitaria es necesaria y que la reforma establecida por la Ley sanitaria no está en contra de los valores mencionados.

Desde un punto de vista metodológico, este capítulo sirve para identificar los aspectos que serán tenidos en cuenta a la hora de analizar los discursos.

Los capítulos 2 a 5 sirven de información de fondo para los restantes.

En el 2: *La sanidad en los Estados Unidos* se utilizan datos estadísticos para describir la situación insostenible de la sanidad en los Estados Unidos, básicamente el gran número de personas sin ningún tipo de seguro, la ausencia de cobertura universal, el alto precio de la sanidad,

la corta esperanza de vida, la alta mortalidad infantil y los insostenibles, por excesivos, gastos de sanidad. Esta delicada situación es especialmente severa tanto para los que no tienen seguro como para los jinetes libres aunque las consecuencias afectan a la economía en general. Siguiendo la metodología de Lipset, la estadística ha de comparar a los Estados Unidos con otros países de la OCDE para demostrar que a pesar de que el gasto sanitario es mucho más alto que el de otros países, los Estados Unidos no han sabido distribuir los beneficios sanitarios.

En el 3: *La necesidad de reforma* examina el debate sobre si hay una verdadera necesidad de reformar con independencia de las dos diferentes opiniones sobre el tema: que la reforma es necesaria y que no lo es. Se describen las diferentes posturas sobre cómo llevarla a cabo y si es necesaria la cobertura universal; también se describen los diversos intentos fallidos de hacerlo en el pasado. El capítulo empieza llevando a cabo una evaluación del sistema de sanidad americano para demostrar que la reforma es del todo necesaria puesto que los gastos son insostenibles: “Actualmente estamos gastando más de 2 billones de dólares al año en sanidad – casi más del 50 % más por persona que la siguiente nación que más gasta.”⁸⁴³ También se explora cómo se puede atajar financieramente esta situación y las reformas secundarias que se han de llevar a cabo junto con la financiera, como la necesidad de controlar los costes para prevenir prácticas antijurídicas. Este capítulo también explora las diferentes alternativas para reformar y se centra en la que fue escogida y que está

⁸⁴³ Discurso de Obama sobre la reforma sanitaria en la Conferencia anual de la Asociación Médica Americana. Publicado por la Casa Blanca. Washington D. C. 15 Junio 2009.

actualmente implementándose: se trata de la que tiene como objetivo alcanzar la cobertura universal. Este objetivo ha estado en la agenda de la administración con anterioridad (desde los esfuerzos de F. D. Roosevelt a los del Presidente Clinton) pero los intentos han fallado inevitablemente dado los agentes presentes en el proceso y los años de baja inversión. En esta ocasión, la situación actual es diferente dado que por primera vez las compañías aseguradoras no están totalmente en contra de la reforma.

El 4: *Marco teórico de la reforma* deja de lado los razonamientos constitucionales y económicos para reformar y explora el imperativo moral para hacerlo, los altos valores morales en juego y conceptos como medicina social y bienestar. Se analizan las razones morales para llevar a cabo la reforma: la cobertura universal es un imperativo moral puesto que “es la obligación ética de la sociedad el proveer de sanidad por igual a todos.”⁸⁴⁴ En realidad, esta obligación no es más que una consecuencia de la solidaridad que se predica del carácter americano. Por otra parte, se indaga en el trasfondo ideológico usado en el pasado para boicotear los intentos de reforma: los que se oponen a la ley ven en esta solidaridad un sinónimo de medicina social. Este concepto tiene una historia de desconfianza en los Estados Unidos y por tanto los opositores a la reforma han usado estos términos para alegar que la reforma sanitaria va en contra del mencionado credo americano, específicamente, su individualismo.

⁸⁴⁴ David M. Pariser, “Ethical considerations in health care reform: Pros and cons of the affordable care act”, *Elsevier*, 2012.

El capítulo también examina los discursos para probar cómo Obama cambia de estrategia dependiendo de las circunstancias. El Presidente tuvo que cambiar la estrategia inicial que enfatizaba el deber moral con los que no tienen seguro dado que la reforma sólo se podía alcanzar con el apoyo del sector de las aseguradoras. De ahí que su estrategia, su ética haya sido descrita como “ética a la carta” o “ética del momento” y que haya sido criticada por sus oponentes políticos.

El 5: *El rol del Gobierno en proveer sanidad* describe cómo el gobierno asume la responsabilidad de llevar a cabo la reforma sanitaria; y las muchas razones por las que las diferentes administraciones han encontrado tantos impedimentos para llevarla a cabo.

El capítulo empieza describiendo el papel del Gobierno en proveer de servicios sanitarios a los ciudadanos. Los datos de la OCDE son concluyentes: los Estados Unidos son excepcionales en el grado de procura social dado el tamaño de su PBI. Esto se debe en gran parte al hecho de que los Estados Unidos han fallado en crear un sistema global de sanidad público. Este capítulo repasa la historia de este fracaso y los numerosos intentos en implementar un sistema de cobertura universal. También analiza las razones por las que no hay un sistema nacional de sanidad: la desconfianza en el Gobierno, la estructura del estado federal y sus instituciones, la política cultural anti-estatal, la ausencia de un movimiento de trabajadores y de un partido político con base en los trabajadores, la política racial del Sur que temía que la provisión federal de servicios sanitarios supondría la integración de los servicios que existían en aquel entonces, y finalmente, los poderosos intereses especiales como los

de la Asociación Médica Americana, que hizo presión en el pasado contra cualquier intento de reforma. El capítulo termina con una explicación de cómo tantos elementos en contra de la provisión de sanidad por parte del Gobierno han sido contrarrestados gracias a la aprobación de lo que ha venido a llamarse los “superestatutos”, también llamadas reformas constitucionales *de facto*. La Ley Sanitaria es claramente uno de ellos: la Ley sanitaria trata de ser un paso adelante en que haya presencia estatal a la hora de proveer sanidad.

Los capítulos 6 a 10 exploran la reforma llevada a cabo por la Ley Sanitaria.

El 6: *La reforma viene de mano de la Ley Sanitaria* analiza la reforma contemplada por la Ley Sanitaria desde el punto de vista del excepcionalismo americano. Describe el contexto de la recesión económica cuando fue aprobada y las trabas legales que hubo de pasar el proyecto hasta que llegó el día en que se aprobó la Ley, un día histórico sin duda. Se destaca por qué es una ley excepcional; cómo se relaciona con el excepcionalismo americano. También se exploran las diferentes reacciones cuando fue aprobada: tanto las favorables como las hostiles. Su implementación sigue en parte en papel y dada la historia de intereses partidistas del proyecto hasta que la Ley se hizo realidad y la polarización del escenario político actual, el futuro no es muy halagüeño.

El 7 describe el instrumento previsto por la Ley que no es otro que el mandato individual para dar solución a una situación que se describirá en el 8. *El Mandato Individual* estudia el núcleo de la controversia que rodea la Ley Sanitaria, y también las diferentes

explicaciones relacionadas con el excepcionalismo americano sobre su cuestionada constitucionalidad. Obama no usa estos términos y prefiere usar “responsabilidad personal.” Tal responsabilidad ha dado sus frutos puesto que numerosos grupos de población ya se están beneficiando de la Ley: los beneficiarios absolutos, *free riders*, (o que se excluyen voluntariamente del sistema de seguros sanitarios),⁸⁴⁵ las familias de clase media, los jóvenes, las mujeres y los pobres y enfermos y los que no pueden permitirse pagar un seguro sanitario. Este capítulo establece la relación entre el mandato individual y la cobertura universal – el mandato es el medio para alcanzarla haciendo que la sanidad sea accesible para todos. De ahí el nombre de la Ley.

El capítulo 8: *La Ley Sanitaria y el acceso al seguro sanitario* examina la relevancia del mandato individual a la hora de abordar el problema del gran número de personas sin seguro y de beneficiarios absolutos. Los llamados intercambios constituyen la opción pública para todas estas personas que no se pueden permitir un seguro. Los expertos coinciden en la necesidad de que se incorporen al mercado los que no tienen seguro para terminar la situación adversa que sufren aquellos que sí cuentan con un seguro y que tienen que sufragar los gastos sanitarios cada vez que los que no tienen contratado un seguro caen enfermos. Es decir, la opción pública facilita la incorporación de los que no tienen seguro para con ello frenar el incremento de las primas de seguro de aquellos que sí cuentan con uno; estos ven su prima aumentada por las aseguradoras que

⁸⁴⁵ Se trata de personas que pueden costearse un seguro sanitario pero prefieren correr el riesgo y no hacerlo dando prioridad a otros gastos.

compensan así los gastos excesivos que devenga el que no tiene un seguro o el beneficiario absoluto.

El capítulo también explora los efectos de la expansión de la cobertura Medicaid y la controversia surgida de la expansión de este programa que lo hace accesible a 16 millones de americanos. Pero depende de la decisión de cada Estado el implementar tal expansión. Esta salvedad que fue objeto de disensión en el Congreso necesitó de la decisión del Tribunal Supremo que establece que los Estados no pueden ser forzados a participar en el programa. De ahí la diferencia en implementación entre estados, por ejemplo, entre Nueva York, pionero en la implementación y Texas, todavía renuente a aceptar las consecuencias de la Ley. La relación entre la Federación y los Estados es otro elemento que explica la desconfianza en el Gobierno que yace en el núcleo del excepcionalismo americano.

Así, ambos mecanismos, mandato individual y expansión de la cobertura Medicaid fueron impugnados ante el Tribunal Supremo.

Los capítulos 9 a 10 se ocupan de los derechos individuales.

Capítulo 9: *Derechos individuales y desconfianza del Gobierno* analiza el concepto de desconfianza en el Gobierno y su contrapunto: el individualismo. La raíz de estos derechos, el individualismo y la desconfianza en el Gobierno, constituyen el núcleo del credo americano y constituyen el marco teórico de las discusiones sobre la constitucionalidad de la Ley Sanitaria. Ambos elementos son estudiados por los expertos en individualismo americano como valores enraizados en la cultura americana. Los discursos reflejan dos puntos de vista opuestos:

aquellos en contra de la Ley sanitaria consideran que el mandato individual parece ir en contra del individualismo en favor de una expansión del Gobierno sin precedentes e inaceptable. Un Gobierno omnipresente acaba poniendo en riesgo los derechos individuales. Los que están a favor de la Ley responden a esto diciendo que el derecho del individuo a no comprar un seguro tiene un precio puesto que al final la decisión de no contribuir al sistema afecta negativamente tanto al individuo que no tiene seguro como al mercado de sanidad porque encarece los precios de las primas de los que tienen seguro. Es gracias a la acción colectiva de aquellos que sí contribuyen con el pago de primas mensuales como el beneficiario absoluto puede recibir tratamiento sanitario cuando lo necesita. Además, algunas situaciones, como la de la sanidad, solo pueden ser atajadas con la mano omnicomprendensiva de la administración y no se puede dejar a los diferentes estados de la Unión y mucho menos a los intereses específicos de cada agente (aseguradoras, médicos, hospitales, empresas farmacéuticas, pacientes).

Capítulo 10: *La tabla de derechos del paciente de la Ley Sanitaria* sirve de perfecto desenlace a este trabajo. Se describe otro logro revolucionario contemplado por la Ley sanitaria: el establecimiento indirecto de una tabla de derechos para los pacientes con el fin de acabar con las prácticas legales pero antijurídicas y ciertamente no éticas de las compañías aseguradoras, prácticas infligidas a los pacientes como son las rescisiones injustificadas o el cobro extra a los pacientes que acuden en urgencias a un hospital que no forma parte de la red del seguro que están pagando. Ejemplos de nuevos derechos son el hecho de que los jóvenes

hasta los 26 años quedan cubiertos por el seguro de sus padres y el derecho a recibir tratamientos de medicina preventiva. Estas medidas contribuyen a alcanzar los requisitos establecidos por el derecho internacional sobre los derechos del paciente (Comentario General 14 del Consejo Económico y Social de las Naciones Unidas, 25 de abril – 12 de mayo 2000).

Conclusión: Esta tesis prueba que el Presidente Obama usa el excepcionalismo americano para convencer a los ciudadanos de que la Ley sanitaria, especialmente su mandato individual, no va en contra de la tradición sino todo lo contrario, está en consonancia con las leyes que se aprueban para mejorar la vida de los americanos. Los conceptos que subyacen bajo la idea del excepcionalismo americano (individualismo, desconfianza del Gobierno, solidaridad, medicina social) son usados por cada partido político en disputa para asegurar que las medidas establecidas en la Ley están en consonancia o en contra de la tradición. Por ejemplo, el mandato individual para el ciudadano medio le otorga un derecho a estar asegurado. Aquellos en favor de este derecho consideran que sigue la tradición puesto que la administración ha de proveer soluciones para todos sus ciudadanos con el fin de alcanzar uno de los objetivos establecidos en la Declaración de Independencia: la búsqueda de la felicidad.⁸⁴⁶ Los objetivos establecidos por la Ley sanitaria están en perfecta sintonía con tal búsqueda.

⁸⁴⁶ Thomas Jefferson resumió las libertades esenciales en la Declaración de Independencia (4 de julio de 1776): "Sostenemos estas verdades como evidentes por sí mismas: que todos los hombres son creados iguales; que son dotados por su creador con ciertos derechos inalienables; que entre ellos están la vida, la libertad, y la persecución de la felicidad."

Aquellos en contra del derecho a tener acceso a la sanidad consideran que el mandato va en contra de la tradición del individualismo por el que cada persona es responsable de su propio bienestar y no acepta ningún tipo de intrusión por parte de la administración a la hora de alcanzar tal objetivo, la felicidad.

Introducción

La retórica del excepcionalismo americano en los discursos de Obama sobre la reforma sanitaria

0.1 Excepcionalismo americano y sanidad

Este trabajo analiza los discursos del Presidente Obama sobre sanidad desde el 1 de enero del 2009⁸⁴⁷ hasta la fecha desde el punto de vista del excepcionalismo americano.

Una de sus principales promesas de campaña⁸⁴⁸ fue la de llevar a cabo una muy necesaria⁸⁴⁹ reforma sanitaria. Entró en la Casa Blanca

⁸⁴⁷ 2009 fue el año en que el senador Obama se convirtió en el primer afro-americano en jurar el más alto cargo de una nación cuya población de más de 300 millones de habitantes incluye más de 40 millones de negros; éste es en sí un hecho excepcional.

<http://census.gov/main/www/popclock.html>

⁸⁴⁸ “Tenemos que unirnos para resolver una serie de problemas monumentales – dos guerras, la amenaza terrorista, una economía en descenso, una crisis sanitaria crónica y un cambio climático con potencia devastadora- problemas que no son ni negros ni latinos ni asiáticos, sino más bien problemas que nos afectan a todos.” National Constitution Center, Philadelphia, PA. 28 de marzo de 2008.

<http://www.npr.org/templates/story/story.php?storyId=88478467>

“‘Si no hablo de esto durante la campaña no podré hacerlo en el primer año –y quiero hacer esto,’ le dijo a su equipo de políticas durante el verano. ‘Así que pensad como ganar el argumento [contra McCain]’.” Alter, Jonathan, *La promesa: Presidente Obama: Año Uno*, Simon & Schuster, New York, NY, 11 enero 2011, p. 32.

decidido a alcanzar este objetivo⁸⁵⁰ que se consiguió a través de la difícil aprobación⁸⁵¹ de la Ley de protección del paciente y acceso a sanidad asequible de 23 de marzo de 2010. Esta ley fue recurrida ante varios tribunales pero recibió la sanción constitucional por el Tribunal Supremo el 28 de junio de 2012.

Los discursos sobre sanidad reflejan las dificultades que conllevó este proceso: desde la firme decisión del Senador Obama de reformar la sanidad, las dificultades para que el Congreso aprobase la ley, las apelaciones, hasta la decisión del Tribunal Supremo sobre su constitucionalidad. Sirven de descripciones útiles de la situación de la sanidad en EE.UU., de la necesidad de reformar esta política en particular y de los cambios que la implantación de la ley sanitaria implicaría para el pueblo americano, especialmente en términos de provisión de sanidad.

Obama usa el excepcionalismo americano estratégicamente en sus discursos para probar al pueblo que la reforma de la sanidad llevada a cabo por la ley sanitaria sigue la tradición, es decir, que la ley sanitaria está en perfecta consonancia con enraizados valores americanos.

Formalmente, la retórica de Obama está llena de referencias y jerga típica de aspectos del excepcionalismo americano *inter alia*, América

⁸⁴⁹ Esta necesidad está explicada en el capítulo 3.

⁸⁵⁰ “La cuestión era en qué proyecto, energía o salud, el Comité de Waxman había de empezar a trabajar. ‘Es como escoger entre dos de tus niños,’ Obama le dijo. ‘Pero me importa más la sanidad’.” Alter, op. cit. p. 255. Waxman era el presidente del Comité del Congreso de energía y comercio.

⁸⁵¹ “No fue una decisión fácil la de llevar a cabo la reforma sanitaria. La ley sanitaria sólo salió a flote después de una aprobación larga y tortuosa que en varias ocasiones pareció que iba a quedar paralizada.” Alex Waddan. “Dos años de logro y lucha: los Demócratas y la presidencia de Obama, 2009-10” in Iwan Morgan y Philip John Davies, *Gobierno Roto. Política Americana en la Era de Obama*, Universidad de Londres y Biblioteca Británica, 2010, p. 149.

como nación escogida, como nación cristiana, como bastión del capitalismo, como nación inocente.⁸⁵² Estas referencias tienen como objetivo convencer al pueblo americano de que la ley sanitaria no es un cuerpo legal anti-americano, como así lo consideran los que se oponen a la reforma sanitaria dispuesta en la Ley sanitaria.

Sustancialmente, la sanidad en EE.UU. es una política clave que muestra claramente que los EE.UU. son una nación verdaderamente excepcional puesto que no existe cobertura universal, no hay sistema de sanidad público como tal. La ley sanitaria está a un paso de tratar de cambiar esta situación.⁸⁵³

Este cuerpo legal ha levantado mucha controversia⁸⁵⁴ lo que demuestra que esta política clave en particular es fundamental a la hora de estudiar el excepcionalismo americano. Aquellos en contra de la ley, básicamente el partido Republicano y sus votantes (especialmente los de tipo extremo, también conocidos como los seguidores del Tea Party)⁸⁵⁵

⁸⁵² Todas estas referencias son exploradas como mitos por Richard T. Hughes en *Myths America Lives By*, University of Illinois, Illinois, 2003.

⁸⁵³ Algunos consideran que no es suficiente: “La Ley sanitaria se queda corta en su objetivo; reduce el número de personas sin seguro por poco menos de la mitad, de 54 millones a una cifra estimada de 23 millones en 2019.” Mark A. Hall, “Commerce Clause Challenges to Health Care Reform”, *University of Pennsylvania Law Review*, Vol. 159, 2010 – 2011.

⁸⁵⁴ En la misma línea Obama dice: “Aun así, sé que el debate sobre esta ley ha sido divisorio. Y respeto la preocupación real que millones de americanos han compartido. Y sé que mucha atención de los medios sobre el debate de la sanidad se ha centrado en qué significa políticamente” (28 de junio, 2012).

⁸⁵⁵ “Así que Barack Obama fue elegido nuestro presidente número 44. No tenía mi voto pero sí que estaba en mis rezos. Recurrió a tantos tópicos sin sentido en la campaña –frases sin sentido, producidas en apariencia en una fábrica de creación de grupos. Pero sí que hizo una promesa que tomé en serio; prometió la sanidad universal –otro eufemismo para control gubernamental y en último extremo secuestro de nuestro sistema de salud.” Michel Bachman, *Core of Conviction. My Story*, Sentinel HC, New York, 2011.

consideran, por ejemplo, que la ley sanitaria va en contra del individualismo y del recelo al Gobierno, ambos conceptos genuinamente americanos. Obama prueba en sus discursos lo contrario, y que tal consideración es tan equivocada como perversa y contraproducente en términos de revertir la situación de la sanidad en América.

En suma, este trabajo analiza el excepcionalismo americano desde el punto de vista formal (a través de referencias directas en los discursos) y sustancial (a través de los cambios previstos por la ley sanitaria y explorados en los discursos). En otras palabras, formal y sustancialmente, el excepcionalismo americano está presente en los discursos sobre sanidad y en la reforma de la sanidad iniciada por Obama.

0.2 Objetivos

Este trabajo tiene los siguientes objetivos:

- Analizar el efecto del uso del excepcionalismo americano en los discursos de Obama. Demostrar que Obama incluye elementos del excepcionalismo americano en sus discursos como instrumento retórico eficaz para persuadir a la gente y explicar los temas fundamentales de la ley sanitaria.
- Calibrar la influencia de las creencias culturales y las prioridades axiológicas en las políticas públicas. El excepcionalismo americano es reflejo de la cultura de los EE.UU. El estudio del excepcionalismo americano refleja una serie de creencias culturales y prioridades en valores enraizadas en el pueblo que se reflejan en las políticas

públicas. De tal forma que si no se cumple esa condición el sistema cuenta con un número de mecanismos para declararlas nulas de pleno derecho (ej. el recurso de casación y otros métodos de revisión judicial). Este trabajo demuestra que la ley sanitaria es un reflejo de estas creencias culturales (al menos para los que están a favor de la implementación completa de esa Ley) y que los discursos lo destacan a través de la constante referencia al excepcionalismo americano.

- Probar que el excepcionalismo americano es un concepto relevante en la política americana actual. Este trabajo tiene como objetivo probarlo a través del análisis de los discursos de Obama sobre reforma sanitaria conforme a ley.

- Calibrar hasta qué punto la recesión influye en las decisiones políticas y obliga a adoptar determinadas medidas. Es decir, el que las condiciones económicas sean difíciles hace dejar de lado el recelo, típico del excepcionalismo americano, a la intervención del Gobierno, y dejando de lado esa desconfianza se espera que el Gobierno en esas circunstancias implemente medidas de bienestar como la Ley sanitaria.⁸⁵⁶

⁸⁵⁶ “En tiempos de crisis hemos de buscar a alguien que nos salve: durante la crisis de la Revolución, los Padres Fundadores; en la crisis de la esclavitud, Lincoln; en la Depresión, Roosevelt; en Vietnam – la Crisis del Watergate, Carter.” Howard Zinn, *A People’s History of the United States*, Harper Collins Publishers, New York, 2003, p. 632.

- Calibrar hasta qué punto el excepcionalismo americano es un instrumento de formación de políticas efectivo, especialmente en políticas tan complicadas como la sanitaria.⁸⁵⁷
- En último extremo, el objetivo de este trabajo es analizar el excepcionalismo americano y la sanidad juntos; ver cómo se combinan y se aprovecha uno del otro.

Para alcanzar estos objetivos he usado los métodos y fuentes descritos en la siguiente sección.

0.3 Metodología y fuentes

0.3.1 Metodología

Las tres fuentes cualitativas usadas son: los discursos de Obama, análisis doctrinales sobre el excepcionalismo americano y análisis doctrinales sobre la reforma sanitaria; de su combinación ha resultado este trabajo.

Teniendo en cuenta estas tres fuentes de información he usado la siguiente **estrategia de investigación**: identificar las partes de los discursos donde se hace referencia a un aspecto de la de salud, por

⁸⁵⁷ “La mayoría de los países desarrollados tienen un sistema de salud único, con una filosofía común sobre cobertura, acceso, y costes. Los Estados Unidos no lo tienen. Aquí, multitud de aspectos del acceso a la sanidad, provisión, y actuación hacen que la tarea de describir la sanidad en Estados Unidos sea particularmente onerosa” David Cutler and Patricia Keenan, “Health Care,” in *Understanding America*, Peter H. Schuck and James Q. Wilson (eds), Public Affairs, New York, 2008, p. 449.

ejemplo, los *free riders*. Asimismo, identificar partes de discursos donde se hace referencia a elementos del excepcionalismo americano en relación con ese aspecto particular de la sanidad, ej. el derecho a permanecer sin seguro como clara expresión de la tradición individualista. Con este propósito *in mente* se han utilizado los artículos de la doctrina para identificar los elementos anteriores (individualismo, religión, supremacía, superación del individuo...). También se utilizaron para tener la información previa necesaria sobre aspectos de sanidad. Los estudios doctrinales proporcionaron la información necesaria para el análisis de los discursos. Esta fue la preparación preliminar para poder trabajar en los discursos. Estos fueron utilizados en esta fase y más tarde al profundizar en el estudio del excepcionalismo americano y sanidad. Se trata de un proceso continuo: cuanto más examinaba los discursos más informativos y claros parecían los artículos y viceversa, el estudio profundo de los artículos proveían de información valiosa para releer los artículos desde el punto de vista de los diferentes expertos.

Esta praxis fue usada para examinar los discursos sobre una política específica (política de sanidad) teniendo en cuenta el marco teórico, filosófico y cultural del excepcionalismo americano. Hay multitud de compilaciones de discursos del actual presidente pero no se centran en ningún aspecto en particular - su orden es "meramente" cronológico; y todos demuestran un motivo ulterior, es decir, alabar al Presidente. Buenos ejemplos son la compilación de Henry Russell (*La política de la esperanza*)⁸⁵⁸ o la de Jackson Easton cuya compilación tiene un título y un

⁸⁵⁸ Henry Russell, *The Politics of Hope*, New Holland Publishers, London, 2009.

subtítulo por sí solo revelador: *Inspira a una nación. Los discursos más electrificantes de Barack Obama desde el primer día de su campaña hasta su inauguración.*⁸⁵⁹ Arthur Schlesinger Jr.⁸⁶⁰ analiza los discursos inaugurales de los presidentes de los Estados Unidos desde George Washington a George W. Bush.⁸⁶¹

Los discursos han sido utilizados con anterioridad como perfectos ejemplos del uso maestro de la retórica para convencer a "las masas", es decir, como instrumentos de persuasión; por ejemplo, los *fireside chats* de Roosevelt.⁸⁶² Como tales su estudio pertenece a una rama diferente de conocimiento (la retórica o los estudios de comunicación).

Este trabajo se centra en una política en particular, es decir, la sanitaria, y el enfoque no es tanto en los recursos retóricos como en el contenido de los discursos, es decir, cómo Obama describe la situación de

⁸⁵⁹ Jaclyn Easton, *Inspire a Nation. Barack Obama's Most Electrifying Speeches from Day One of His Campaign Through His Inauguration*, Publishing 180, 2009.

⁸⁶⁰ Arthur M. Schlesinger Jr. y Fred L. Israel (editores), *Los discursos inaugurales de los presidentes de los Estados Unidos, 1789 – 2005*, Checkmarck Books, Nueva York, 2007.

⁸⁶¹ Ya publicada la última edición de 2009. Arthur Meier, Jr. Schlesinger (Introduction), Fred L. Israel (Commentary), *My Fellow Citizens: The Inaugural Addresses of the Presidents of the United States, 1789-2009. Facts on File Library of American History, [Hardcover]* Facts on File, 1 edition, December 1, 2009.

⁸⁶² Greenstein establece una comparación entre el estilo de liderazgo de FDR a Obama. Analiza un número de cualidades, entre ellas "la competencia del presidente como comunicador público" Fred I. Greenstein, *The Presidential Difference*, Princeton University Press, Princeton, 2009, p. 5.

Menciono a Roosevelt puesto que: "en su práctica comunicativa, como en muchas otras cosas, FDR puso el listón para sus sucesores. Su retórica elevada inspiraba las imaginaciones y conmovía las almas. [...] Como comunicador, Roosevelt fue a los presidentes posteriores lo que Mozart y Beethoven han sido a sus sucesores – inimitables pero inspiradores sin fin. No es probable que presidentes futuros puedan equiparar la elocuencia de FDR, pero no podrían hacer nada mejor que sumergirse en su récord, leyendo sus discursos, escuchando sus grabaciones, y estudiando la presentación pública de sí mismo", *ibid.* p. 22.

la sanidad en América para convencer al pueblo americano de la necesidad de reforma y de la necesidad de aceptar la ley sanitaria puesto que su contenido está en consonancia con valores típicos americanos.

El uso de esta praxis en particular es heredera de una tradición metodológica; además contribuye a la progresiva metodología de investigación de tipo cualitativo a través de la selección específica de discursos por contenido (es decir, discursos sobre sanidad) como información para conseguir un propósito específico: el análisis del excepcionalismo americano.

0.3.2 Fuentes - Materiales de investigación utilizados

Los materiales de investigación utilizados son básicamente tres: los discursos de Obama, artículos de doctrina sobre el excepcionalismo americano y artículos de doctrina sobre sanidad y la ley sanitaria. El enfoque ha sido cualitativo. Se ha escogido este enfoque selectivo de materiales para probar que en momentos clave Obama incluye elementos de excepcionalismo americano en sus discursos. Esto podría haber sido también probado (en gran medida, o con más autoridad) a través de la selección al azar de los discursos pero se han escogido aquellos que fueron pronunciados en momentos considerados por los medios de comunicación y la doctrina como fundamentales. De hecho, los discursos en sí establecen lo significativo del momento (por ejemplo, el día en que Obama firma la ley). Se ha señalado la importancia de cada discurso en la siguiente sección.

0.3.2.1 Fuentes primarias

Las principales fuentes primarias que usadas en este trabajo son los discursos del presidente Obama. Se incluye una lista de discursos que muestran que el 44 presidente no estuvo corto en palabras.⁸⁶³ Para conseguir los objetivos mencionados se escogieron discursos que son significativos por las razones que a continuación se exponen:

1. 9 de marzo, 2009 - Washington, D. C. Obama aborda la decisión de abolir los límites de investigación con células madre embrionarias - Ala este de la Casa blanca.

La investigación con células madre es una materia decisiva que tiene inmersa el tradicional dilema religión / ética frente a ciencia. La expresión política de este dilema enfrenta a los conservadores que niegan la posibilidad de usar células humanas puesto que este tipo de investigación conlleva el sacrificio de embriones humanos, y los progresistas que alientan tal posibilidad con vistas a la futura investigación sobre terapias genéticas para curar enfermedades para las que en estos momentos no hay

⁸⁶³ En este sentido, esto es lo que dice Greenstein: "Como queda evidenciado del tour de fuerza retórico que le puso en el mapa político, Obama es un comunicador público con talento. Su fuerza deriva en parte de su talento como orador y en parte de su mensaje. Obama toma ideas de sus asesores para refinar y pulir sus discursos, pero él es su principal escritor. Sus oponentes en las primarias y elecciones generales del 2008 reconocían su elocuencia pero intentaban utilizarla en su contra al sostener que tenían poca sustancia. Después de su elección, sin embargo, Obama se convirtió en todo sustancia, estableciendo su programa al detalle. Poco se oyó entonces la afirmación de que su retórica era vacía. Greenstein, op. cit. p. 216.

remedio. Se eligió este discurso no solo por las razones sustantivas antedichas sino también por las numerosas referencias que se hacen a elementos del excepcionalismo americano.

2. 15 de junio, 2009 - Chicago. Discurso de Obama sobre reforma sanitaria en la conferencia anual de la Asociación médica americana.

La Asociación médica americana es un agente fundamental a favor de esta reforma. Este no ha sido siempre el caso.⁸⁶⁴ El presidente Obama afronta los temas desde el punto de vista de la profesión médica.

3. 9 de septiembre, 2009 - Washington, D. C. - El Presidente Obama se dirige a la sesión conjunta del Congreso en sanidad.
4. 24 de diciembre, 2009 - Washington, D. C. - Comentarios del Presidente sobre la aprobación por el senado de la reforma sanitaria. Comedor de estado.
5. 21 de marzo, 2010 - Washington, D. C. - Obama hace declaraciones después de que la Cámara de representantes aprobase el proyecto de ley sobre reforma sanitaria.
6. 23 de marzo, 2010 - Washington, D. C. - Obama firma el proyecto de ley.

⁸⁶⁴ Ver la sección sobre las razones de la ausencia de un sistema de sanidad nacional.

Esto se hizo evidente al final de la década de los 30 y dadas las dificultades en llevar a cabo la reforma pública impuesta por la profesión médica o como dice Funigiello: “la habilidad de la medicina organizada en gastarse más si cabe y superar la estrategia de los reformadores de la sanidad y los legisladores liberales.” Funigiello, op. cit. p. 3.

7. 21 de septiembre, 2010 - Washington D. C. - Obama da una teleconferencia sobre la reforma sanitaria.

Esta teleconferencia es importante porque trató entre otras cosas sobre un proyecto de carta de derechos para los pacientes, lo cual es una verdadera novedad. Además, fue dada a través de un método poco convencional. Obama es el primer presidente en haber usado las tecnologías de la información frecuentemente con el fin de ganar las elecciones generales en el 2008 y 2012.⁸⁶⁵ Esta conferencia congrega a representantes de diferentes congregaciones religiosas. Sus palabras enfatizan la importancia de la religión en los EE.UU. y cómo estos representantes desempeñan un papel mayor en informar de los beneficios a su gente.

8. 22 de septiembre, 2010 - Falls Church, Virginia - Obama preside una discusión informal sobre reforma sanitaria y la carta de derechos del paciente.

Es el único discurso en el que usa la palabra "mandato."

9. 28 junio, 2012 - Washington, D. C. - Comentarios del Presidente sobre la decisión del Tribunal Supremo sobre la ley sanitaria.

Se hicieron después de que el Tribunal Supremo declarase constitucional la ley sanitaria.⁸⁶⁶

⁸⁶⁵ "Le ayudó el uso innovador de internet en la campaña para movilizar a los que le apoyaban y sacar fondos, así como su búsqueda de delegados en los estados en que los delegados se seleccionaban por los caucus, cosa que las fuerzas de Clinton tendían a ignorar." Greenstein, op. cit. p. 215.

⁸⁶⁶ National Federation of Independent Business v. Sebelius, June 28, 2012.

He incluido un apéndice con los discursos estudiados destacando las referencias relevantes al excepcionalismo americano (Apéndice I). También se incluye una tabla con todos los discursos de Obama (189) que tocan directa e indirectamente el tema de la reforma sanitaria (Apéndice II).

Las transcripciones de los discursos pertenecen al Proyecto presidencial americano (presidency.ucsb.edu), la Casa Blanca (whitehouse.gov/briefing-room/speeches-and-remarks) y el Washington Post

(washingtonpost.com/blogs/wonkblog/wp/tag/transcripts/).

También se han tenido en cuenta los debates en el Congreso y el Senado sobre la ley sanitaria, y las sentencias relevantes al caso del Tribunal Supremo de los Estados Unidos. La sentencia fundamental sobre la reforma sanitaria es *Federación Nacional de Empresarios Independientes v. Sebelius*,⁸⁶⁷ Junio 28, 2012. Los diferentes recursos ante el Tribunal de Apelación también se tuvieron en cuenta. Los diferentes informes remitidos por los abogados de cada estado para recurrir la constitucionalidad de la ley sanitaria y la respuesta del abogado federal fueron también de interés fundamental puesto que contra-argumentan los argumentos de cada parte.

⁸⁶⁷ Sebelius se refiere a Kathleen Sebelius, ministra de sanidad y servicios humanos. Fue gobernadora e inspectora de seguros en Kansas.

0.3.2.2 Fuentes secundarias

Con respecto a las fuentes secundarias se han utilizado análisis doctrinales sobre el excepcionalismo americano, sanidad, bienestar, discursos políticos y estudios culturales.

Este trabajo se ha beneficiado de la investigación de un aspecto particular de la sanidad, es decir, la que provee el sector farmacéutico, que se llevó a cabo en las siguientes instituciones:

- Universidad de Fordham
- la Biblioteca Pública de Nueva York (Biblioteca de Ciencias, Industria y Empresa)
- Universidad de Georgetown
- Biblioteca del Congreso
- Universidad Libre de Bruselas;
- Biblioteca Británica
- University de Oxford.

Los diferentes períodos de intensa investigación han sido imprescindibles para profundizar en el tema de la Tesis. Además durante tres meses de 2012 se ha llevado a cabo una investigación en los fondos de las Universidades de Wolverhampton, Oxford y Londres (UCL – University College London e Institute for Advanced Studies); y por supuesto, de la Biblioteca Británica.

También se han presentado trabajos relacionados con el tema de la Tesis en la Universidad de Manchester Metropolitan⁸⁶⁸ y en el Instituto Franklin (Universidad de Alcalá);⁸⁶⁹ y ante la Asociación Americana de Estudios Políticos.⁸⁷⁰

También se han publicado artículos relacionados con el tema (*Comparing F. D. Roosevelt and B. H. Obama in Developing Welfare*;⁸⁷¹ *Using Antitrust to Reform Health Care in the United States*)⁸⁷².

Preparar todo este trabajo fue crucial para conocer el valor investigador de esta tesis.

⁸⁶⁸ American Politics Group Conference. Presentación del trabajo *Using Antitrust to Reform Health Care in the United States*. Manchester Metropolitan University. 2012.

⁸⁶⁹ - The 6th Transatlantic Studies Conference. Presentación del trabajo: *Using Antitrust to Improve Access to Pharmaceuticals in the North and South*. Instituto Franklin de Investigación en Estudios Norteamericanos. Universidad de Alcalá. 2011.

- 10th Biannual International Spanish Association for American Studies Conference. Presentación del trabajo: *Comparing FDR's and BHO's Presidency in the Development of Welfare in the United States*. 2011. Instituto Franklin de Investigación en Estudios Norteamericanos. Universidad de Alcalá.

⁸⁷⁰ 2013. Reunión anual de APSA (American Political Sciences Association). Chicago. Presentación del trabajo *American Values and Health Care*.

⁸⁷¹ - Serrano Lanzuela, Carmina, "Comparing F. D. Roosevelt and B. H. Obama in Developing Welfare", *Revista de Estudios Norteamericanos* 15. University of Seville, Seville, Spain, 2011, pp. 101-121.

- Serrano Lanzuela, Carmina, "Comparing F. D. Roosevelt and B. H. Obama in Developing Welfare" in Gurpegui, José Antonio & Isabel Durán (eds.), *The Backyard of the U. S. Mansion*, Biblioteca Benjamin Franklin, Instituto Franklin de Investigación en Estudios Norteamericanos, University of Alcalá, 2012, pp. 193 – 212.

⁸⁷² - Serrano Lanzuela, Carmina, "Using Antitrust to Reform Health Care in the United States" in Gurpegui, José Antonio (eds.), *North and South: The United States, the European Union, and the Developing World*, Instituto Franklin de Investigación en Estudios Norteamericanos, University of Alcalá, 2013.

0.4 Estructura y contenido

La Ley sanitaria, los discursos y los debates entre estudiosos y en los medios de comunicación hacen referencia a conceptos e ideas diversos relacionados con el excepcionalismo americano. En cada capítulo se disecciona un elemento clave de la política sanitaria y se examina cómo este queda reflejado en los discursos a la vez que se hace referencia en cada discurso a elementos del excepcionalismo americano. Este trabajo demuestra que hay un número de temas básicos de la política sanitaria y típicos del excepcionalismo americano, que aparecen de manera regular en los discursos; también se demuestra que el excepcionalismo americano es el eje fundamental de la política y de la Ley sanitarias.

- El capítulo 1 ('¿Qué es el excepcionalismo americano?') examina brevemente el concepto de excepcionalismo americano e identifica qué elementos son típicamente usados a lo largo de los discursos.

- El capítulo 2 ('La sanidad en los Estados Unidos') consiste fundamentalmente en describir la situación de la sanidad en los Estados Unidos, básicamente el número de personas sin ningún tipo de seguro, la ausencia de cobertura universal, el alto precio de la sanidad, la esperanza de vida, la mortalidad infantil y los gastos de sanidad.

- El capítulo 3 ('La necesidad de reforma') examina el debate sobre si hay una verdadera necesidad de reformar la sanidad, las

diferentes opiniones sobre cómo llevar la reforma a cabo y si es necesaria la cobertura universal; también se describen los diversos intentos fallidos de hacerlo en el pasado.

- El capítulo 4 ('Marco teórico de la reforma') deja de lado los razonamientos constitucionales y económicos para llevar a cabo la reforma y explora el imperativo moral para hacerlo: examina los altos valores morales que hay en juego y conceptos como la medicina y el bienestar sociales; también se examinan los discursos para probar cómo Obama cambia de estrategia dependiendo de las circunstancias.

- El capítulo 5 ('El rol del Gobierno en proveer sanidad') describe el posible control por la administración de la política sanitaria y examina la ausencia de un sistema de seguro de sanidad nacional; es decir, las razones por las que existe esta ausencia y si la ley sanitaria trata de ser un paso adelante en que haya presencia estatal a la hora de proveer sanidad.

- El capítulo 6 ('La ley sanitaria') describe el contexto económico en el momento que fue aprobada y las diferentes reacciones que suscitó; destaca por qué es una ley excepcional; cómo se relaciona con el excepcionalismo americano; el futuro de la ley y la reforma que prevé.

- El capítulo 7 ('El Mandato Individual') describe ese concepto y explora las diferentes explicaciones relacionadas con el excepcionalismo americano y sobre su cuestionada constitucionalidad.

- El capítulo 8 ('La Ley Sanitaria y el acceso al seguro sanitario') examina la relevancia del mandato individual a la hora de abordar el problema del gran número de personas sin seguro y de *free riders*; también describe la controversia sobre la expansión de la cobertura Medicaid.

- El capítulo 9 ('Derecho individuales y desconfianza del Gobierno') estudia el declive del individualismo extremo y el crecimiento paralelo de la acción colectiva.

- El trabajo termina con el capítulo 10 ('La tabla de derechos del paciente de la Ley sanitaria') que, a pesar de que la Ley sanitaria no establece una carta de derechos explícita, el número de cláusulas relativas a derechos humanos, permite a los expertos hablar de una carta implícita, lo que supone un gran logro.

0.5 Marco teórico

Lo que viene a continuación es un compendio de la doctrina sobre el excepcionalismo americano. Su estudio es necesario para hacerse idea de los temas fundamentales abordados por los eruditos a la hora de probar que el excepcionalismo americano es tanto una realidad como una mera creencia que pocas veces ha tenido correspondencia con la realidad.

La literatura sobre la **base histórica, constitucional y las implicaciones religiosas del excepcionalismo americano** es abundante, y se usa para demostrar que la tradición de los Padres fundadores ha

calado en la mente de muchos americanos. De este modo, los eruditos del excepcionalismo americano se centran en el origen histórico del concepto, y sus principios fundamentales en términos de ideología, política, economía, religión y bienestar. Estos “temas” fueron estudiados por primera vez por **Lipset** en su trabajo fundamental sobre el excepcionalismo americano de 1996.⁸⁷³ Su teoría fundamental es que a la hora de estudiar hasta qué punto es excepcional una nación en particular, es del todo fundamental, desde el punto de vista metodológico, el trazar comparaciones con otras naciones. Compara por ello a los EE.UU. con Canadá, el Reino Unido y Francia. También lleva a cabo un estudio comparativo de la revuelta americana contra el dominio colonial, con las naciones emergentes en la escena mundial en los años 60 a través del proceso de descolonización.⁸⁷⁴ Este trabajo incorpora esta idea y compara a los Estados Unidos con miembros de la OCDE.

Hughes⁸⁷⁵ analiza una serie de **mitos** que yacen en el corazón del excepcionalismo americano (el mito de la nación escogida, de la nación por naturaleza, de la nación cristiana, de la nación milenaria, de la nación inocente). Considera que estos mitos han provisto a los Estados Unidos con un perfecto velo para evitar hacer frente a la realidad, lo que supone una amenaza a los principios fundamentales de la Constitución. Esta idea es desarrollada por Hodgson⁸⁷⁶ que argumenta que América no es

⁸⁷³ Seymour Martin Lipset. *American Excepcionalism. A Double-Edged Sword*, Norton, New York, 1997.

⁸⁷⁴ Seymour Martin Lipset, *The First New Nation*. Transaction Publishers, New Jersey, New Brunswick, 2003.

⁸⁷⁵ Richard T. Hughes, *Myths America Lives By*, University of Illinois, Illinois, 2003.

excepcional como a algunos les gustaría pensar; incluye un recuento histórico para probar esta idea.

Wrobel⁸⁷⁷ incluye una narración histórica para explorar la formación de la **frontera** y establece la relación entre esta formación y la del excepcionalismo americano. Edward y Weiss⁸⁷⁸ se centran en la retórica usada en contextos diferentes, como la presidencia, la política internacional, religión, economía e historia americana.

Cuatro autores analizan diferentes **políticas** desde el punto de vista del excepcionalismo americano. Ignatieff⁸⁷⁹ analiza el comportamiento de los Estados Unidos en relación con los derechos humanos internacionales y examina cómo difiere de la mayoría de las naciones occidentales; y Lockhart⁸⁸⁰ explora diferentes políticas desde el punto de vista de los regímenes tributarios, política de aborto, inmigración y ciudadanía; lo mismo hace Shuck y Wilson.⁸⁸¹ Graham K. Wilson estudia la contribución del Gobierno en determinadas políticas para calibrar hasta qué punto se gestionan de diferente manera en América.⁸⁸²

⁸⁷⁶ Geoffrey Hodgson, *The Myth of American Exceptionalism*, Yale University Press, New Haven and London, 2009.

⁸⁷⁷ David M. Wrobel, *The End of American Exceptionalism*, University Press of Kansas, Lawrence, 1993.

⁸⁷⁸ Jason A. Edwards and David Weiss (eds), *The Rhetoric of American Exceptionalism*, McFarland & Company, Jefferson, North Carolina and London, 2011.

⁸⁷⁹ Michael Ignatieff, *American Exceptionalism and Human Rights*, Princeton University Press, Princeton and Oxford, 2005.

⁸⁸⁰ Charles Lockhart, *The Roots of American Exceptionalism*, Palgrave Macmillan, New York, 2011.

⁸⁸¹ Peter H. Shuck and James Q. Wilson (eds), *Understanding America*, Public Affairs, New York, 2008.

También hay abundante literatura sobre **sanidad**, tanto artículos de doctrina como artículos de opinión que atacan la ley o por el contrario, alaban los cambios fundamentales que implica. Aquellos que critican la ley sanitaria usan elementos de excepcionalismo americano para probar que está en contra de valores americanos; básicamente opinan que el establecimiento del mandato individual por la ley sanitaria es una imposición al individuo; lo cual va en contra de dos principios fundamentales del credo americano: el no-intrusismo del Gobierno en asuntos individuales, y el derecho del individuo a decidir si quiere adquirir o no un seguro de sanidad. Al respecto, los constitucionalistas usan precedentes judiciales y razonamientos legales indistintamente para asegurar sus argumentaciones.⁸⁸³

Dutton⁸⁸⁴ establece una comparación entre los EE.UU y Francia del siglo XX en cuanto a los problemas de la sanidad y las posibles soluciones y prueba cómo los sistemas se aprovechan unos de otros. Walt⁸⁸⁵ analiza estos problemas desde el punto de vista de los distintos agentes. Kamerow⁸⁸⁶ se centra en temas críticos como prevención y salud pública en los EE.UU. Quadagno⁸⁸⁷ examina los diferentes intentos de

⁸⁸² Graham K. Wilson, *Only in America?* Chatham House Publishers. New Jersey, Chatham, 1998.

⁸⁸³ Ver capítulo 7.

⁸⁸⁴ Paul V. Dutton, *Differential Diagnoses*, ILR Press, Ithaca and London, 2007.

⁸⁸⁵ Gill Walt, *Health Policy*, Zed Books, London and New Jersey, 1994.

⁸⁸⁶ Douglas B. Kamerow, *Dissecting American Health Care*, RTI Press, North Carolina, 2011.

⁸⁸⁷ Jill Quadagno, *One Nation Uninsured*, Oxford University Press, Oxford, 2005.

implementar la cobertura internacional; incorpora un recuento histórico de los numerosos fracasos para implementarla; también lo hace Funigiello.⁸⁸⁸

En el momento de redactar esta tesis no se había publicado ningún título sobre la ley sanitaria con excepción del resumen explicativo de los beneficios previstos por la ley por parte de Jacobs y Skocpol.⁸⁸⁹

No hay ningún análisis doctrinal que analice los discursos de Obama desde el punto de vista del excepcionalismo americano; y mucho menos que analice los discursos sobre una política en particular. Aquí yace, en verdad, el espacio de investigación que se pretende llenar, es decir, la aportación a través de este trabajo al estado de la cuestión teórica actual.

0.6 Estudios culturales

Este capítulo examina este trabajo desde la perspectiva de los estudios culturales y demuestra que se encuentra bajo los parámetros de este campo.

Este trabajo puede ser fácilmente catalogado dentro de las fronteras de los estudios americanos puesto que la cuestión sobre qué implica el adjetivo “Americano” está en el corazón de los estudios americanos.

⁸⁸⁸ Philip J. Funigiello, *Chronic Politics*, University Press of Kansas, Kansas, 2005.

⁸⁸⁹ Lawrence R. Jacobs and Theda Skocpol, *Health Care Reform and American Politics*, Oxford University Press, Oxford, 2010.

Los estudios americanos están fuertemente interrelacionados con los estudios culturales. En este sentido, los estudios culturales han desempeñado un papel con otras disciplinas como la historia, la sociología y la política puesto que han cogido prestado contenido temático de estas y también han contribuido a su desarrollo:

“La extensa doctrina teórica de los ‘estudios culturales’ ha sido particularmente útil como medio para facilitar el tráfico intelectual entre disciplinas [como pueda ser los estudios americanos] que comparten un interés en la problemática de la cultura: es decir, ha provisto de estrategias metodológicas, así como de razonamiento teórico, para desarrollar campos interdisciplinarios a través de la movilización de su conceptualización de la cultura y su aplicación a un campo o problemática de investigación en particular.”⁸⁹⁰

Turner asevera que uno de los mejores ejemplos de esta contribución en dos direcciones de los estudios culturales está en los estudios americanos puesto que “el campo en cuestión [los estudios americanos] se ocupan mucho tiempo en debatir su relación con los estudios culturales.” “desde los años 70 en adelante hasta bien entrada la era del 2000, los estudios americanos han estado implicados en un debate amplio sobre la naturaleza y el futuro del campo: [...] cuando formaciones sociales y políticas nuevas demandaban el aparecer reflejadas en las

⁸⁹⁰ Graeme Turner, *What's Become of Cultural Studies?*, SAGE, London, 2012, p. 25.

preguntas que los estudiosos de los estudios americanos se preguntaban, y cuando el 'excepcionalismo americano' era puesto en entredicho." Este poner en entredicho, Denning⁸⁹¹ argumenta, forma parte de una tradición entre los historiadores americanos que cuestionan el lugar de los Estados Unidos en la arena internacional y sugiere que la democracia en América no es real puesto que excluye a muchos de poder beneficiarse de ella, en concreto, "a las poblaciones subordinadas de los Estados Unidos."

La idea de una única cultura americana concebida como un todo único tiene su origen en la Guerra Fría cuando había una necesidad de establecer qué es lo que hacía excepcional a la cultura americana; era un tiempo "en el que el debate público estaba estructurado por la oposición percibida entre el imperio agresivo de la Unión Soviética y la supuestamente desinteresada, democrática república de los Estados Unidos."⁸⁹² La idea de una única cultura americana conlleva fácilmente el aseverar la existencia de una verdadera cultura americana excepcional;⁸⁹³ y el origen de ambas puede ser encontrada en la existencia de una "mentalidad americana" que se alimenta de un credo americano.⁸⁹⁴ "Esta mentalidad es más o menos homogénea. Aunque pueda parecer compleja y compuesta de muchas capas, es de hecho, una única entidad."⁸⁹⁵

⁸⁹¹ Michael Denning, "The Cultural Front: The Labouring of American Culture in the Twentieth Century", *American Quarterly* 28, London, 1996, p. 356-380.

⁸⁹² Stuart Hall, "Notes on Deconstructing the Popular", *The People's History and Socialist Theory*, ed. Raphael Samuel. London, 1981, p. 226 – 239.

⁸⁹³ Sobre identidad americana ver Deborah Madsen, "Origins: Exceptionalism and American Cultural Identity" in *American Exceptionalism*, BAAS, Edinburgh, 1998, p. 16 – 40.

⁸⁹⁴ The "American mind" is described in the section on the "American creed."

Contribuidores claros a esta “mentalidad” se encuentran en los pensadores principales del país: “Williams, Edwards, Franklin, Cooper, Emerson, Thoreau, Hawthorne, Melville, Whitman, Twain, Dewey, Niebuhr, et. al.”⁸⁹⁶

Esta tradición fue cuestionada más adelante puesto que no incluía a las “poblaciones subordinadas.” Estos particulares “practicantes de Estudios americanos [...] querían entender los Estados Unidos precisamente para criticar su racismo, su clasismo, machismo, xenofobia.”⁸⁹⁷

Este trabajo está también vinculado a los estudios culturales por la conceptualización política del excepcionalismo americano puesto que el excepcionalismo americano es “la estructura central del discurso político en América”⁸⁹⁸ y “un aspecto central de la cultura americana.”⁸⁹⁹

Los teóricos políticos trata de encontrar una explicación a la existencia de instituciones y prácticas puramente americanas. Las explicaciones dadas por los excepcionalistas americanos son numerosas y difieren del peso relativo y asignación de causa y efecto: “La ausencia de feudalismo, la diversidad religiosa, el peculiar carácter de la revolución por la independencia, las circunstancias fortuitas que rodean el desarrollo político temprano, la genialidad en la fundación del país, la conjunción de

⁸⁹⁵ Gene Wise, *American Historical Explanations: A Strategy for Grounded Inquiry*, University of Minnesota, Minneapolis, 1973.

⁸⁹⁶ Ibid.

⁸⁹⁷ George Lipsitz, “Listening to learn and learning to listen: popular culture, cultural theory and American studies”, *American Quarterly* 42 (4), December 1990, pp. 615 – 26.

⁸⁹⁸ Ibid.

⁸⁹⁹ George Lipsitz, loc. cit.

raza y etnicidad, lo barato que era el terreno, el temprano reconocimiento de sufragio para los varones de raza blanca, la separación de lugar de trabajo y residencia son algunos de ellos.”⁹⁰⁰

Este campo de conocimiento también cuestiona si el excepcionalismo americano es real, o un mito: “ser americano (a diferencia de ser inglés o francés o lo que sea) es precisamente imaginarse un destino más que heredar uno; dado que siempre hemos sido, como Americanos que somos, habitantes de un mito más que de una historia.”⁹⁰¹ Esta idea ha sido explorada en profundidad por Hughes⁹⁰² que lleva a cabo un recuento histórico del país desde esta perspectiva: desde el período colonial con su mito de la nación escogida hasta el siglo XX con su mito de la nación inocente.

La combinación de estudios culturales y estudios políticos ha dado resultado a diferentes perspectivas desde las que se puede estudiar el excepcionalismo americano: algunos estudiosos describen América como el país más libre y poderoso en la tierra (por ejemplo, David M. Potter, Seymour Lipset, C. Vann Woodward); un hecho que ha posibilitado el poder alterar las relaciones “entre los varios niveles de la sociedad sin asumir una lucha de clases, [...] sin tener que tratar necesariamente a una clase como víctima o la antagonista de otra.”⁹⁰³ Otros se extienden en la idea de

⁹⁰⁰ Philip Abbot, “Redeeming American exceptionalism / redeeming political science: An analysis of Judith Shklar’s Presidential Address”, *Social Science Journal*, Vol. 32 Issue 3, United States, 1995, p. 215.

⁹⁰¹ Ibid.

⁹⁰² Richard T. Hughes in *Myths America Lives By*, University of Illinois, Illinois, 2003.

excepcionalismo americano como un instrumento perfecto “para reformar o incluso revolucionar.”⁹⁰⁴ Otros consideran que la tarea de la política teórica gira en torno al concepto de redención: América es una nación redimida o en necesidad de urgente redención.⁹⁰⁵

Todos estos diferentes dilemas y dudas han sido estudiados por politólogos y prueban que el excepcionalismo americano no es una teoría aislada puesto que se alimenta y contribuye a otros campos de conocimiento.

⁹⁰³ David M. Potter, *People of Plenty*, University of Chicago Press, Chicago, 1954, pp. 118-119.

⁹⁰⁴ Abbot. loc. cit.

⁹⁰⁵ Judith N. Shklar, “Redeeming American Political Theory”, *American Political Science Review* 85, 1991, pp. 3, 5.

Objetivos

La retórica del excepcionalismo en los discursos de Obama sobre la reforma sanitaria

Esta tesis tiene por objetivo analizar el uso por el Presidente Obama del Excepcionalismo Americano en sus Discursos para demostrar al pueblo americano que la reforma sanitaria de la Ley Sanitaria de 2010 no está en contra de aquellos valores típicamente americanos que según los expertos en el Excepcionalismo hacen de los Estados Unidos un país excepcional.

Este trabajo ha conseguido los objetivos establecidos en la Introducción de la Tesis:

- Analizar el efecto del uso del excepcionalismo americano en los discursos de Obama sobre sanidad; demostrar que Obama incluye elementos de excepcionalismo americano en sus discursos como instrumento retórico eficaz para persuadir a la gente y explicar los temas fundamentales de la Ley Sanitaria.
- Calibrar la influencia de las creencias culturales y la prioridad que se da a determinados valores en las políticas públicas. El

excepcionalismo americano es reflejo de la cultura de los EEUU. El estudio del excepcionalismo americano refleja un número de creencias culturales y prioridades en valores enraizadas en el pueblo que tienen que tener reflejo en las políticas públicas. De tal forma que si no se cumple esa condición el sistema cuenta con un número de mecanismos para declararlas nulas de pleno derecho (e.j. el recurso de casación y otros métodos de revisión judicial).

- Probar que el excepcionalismo americano es un concepto relevante en la política americana actual. Este trabajo tiene como objetivo probarlo a través del análisis de los discursos de Obama sobre reforma sanitaria conforme a la Ley Sanitaria.
- Calibrar hasta qué punto la recesión influye en las decisiones políticas y obliga a adoptar determinadas medidas. Es decir, el que las condiciones económicas sean difíciles hace dejar de lado el recelo, típico del excepcionalismo americano, a la intervención del Gobierno, y dejando de lado esa desconfianza se espera que el Gobierno en esas circunstancias implemente medidas de bienestar como la Ley sanitaria.⁹⁰⁶

⁹⁰⁶ “En tiempos de crisis hemos de buscar a alguien que nos salve: durante la crisis de la Revolución, los Padres Fundadores; en la crisis de la esclavitud, Lincoln; en la Depresión, Roosevelt; en Vietnam – la Crisis del Watergate, Carter”

- Calibrar hasta qué punto el excepcionalismo americano es un instrumento de formación de políticas efectivo, especialmente en políticas tan complicadas como la sanitaria.⁹⁰⁷
- En último extremo, el objetivo de este trabajo es analizar el excepcionalismo americano y la sanidad juntos; ver cómo se combinan y se aprovecha uno del otro.

A lo largo de los diez capítulos que componen la Tesis ha quedado demostrado cómo aparecen en los nueve discursos estudiados cada uno de los elementos que conforman el excepcionalismo americano en sus distintas manifestaciones culturales y valores que están enraizados en el pueblo americano.

Howard Zinn, *A People's History of the United States*. New York: Harper Collins Publishers, 2003, p. 632.

⁹⁰⁷ “La mayoría de los países desarrollados tienen un sistema de sanidad único, con una filosofía común sobre cobertura, acceso, y costes. Los Estados Unidos no. Aquí, los múltiples aspectos del acceso a la sanidad, su prestación y actuación hacen que la tarea de describir la sanidad en este país sea particularmente onerosa.” David Cutler and Patricia Keenan, “Health Care” en Peter H. Schuck and James Q. Wilson (eds), *Understanding America*, Public Affairs, New York, 2008, p. 449.

Conclusión

La retórica del excepcionalismo en los discursos de Obama sobre la reforma sanitaria

La Ley de Protección del Paciente y Sanidad Asequible introduce medidas de reforma revolucionarias en el sistema de sanidad de los Estados Unidos. Quizás la contribución más importante de esta tesis es la de demostrar que los discursos reflejan que estas medidas, especialmente el mandato individual, están en perfecta consonancia con valores americanos profundamente enraizados como por ejemplo el imperativo moral de atajar una situación que afecta a 46 millones de americanos que no tienen seguro (8,1 millones de niños);⁹⁰⁸ de hecho, esta ley fue aprobada, entre otras razones, para acogerles – la cobertura, establece la ley, es universal.

Obama es consciente de la existencia de estos valores, de una ideología netamente americana; y por eso con el fin de llevar a cabo su reforma hace referencia en los discursos a elementos del excepcionalismo americano que son un instrumento retórico eficaz para explicar los temas

⁹⁰⁸ Ver el capítulo 2.

fundamentales de la Ley Sanitaria y persuadir a la gente de que esta sigue la tradición. Con ello además queda demostrado que el pueblo americano puede ser movilizado en el espíritu de los Fundadores. El uso del excepcionalismo por Obama se demuestra en este trabajo con la cita *ad hoc* de sus palabras. Hasta cierto punto, en gran medida y dada la constante referencia al excepcionalismo americano en los discursos, el éxito de la Ley dependía de probar que la Ley Sanitaria seguía (o mejor dicho, no iba en contra de) una tradición cultural que es consistente con valores puramente americanos.

El hecho de que Obama vea la necesidad de usar el excepcionalismo americano en sus discursos es una prueba de que la Ley Sanitaria es una norma excepcional que ataja diversos temas controvertidos.

Las referencias, en la Ley y en los discursos, al excepcionalismo americano prueban que éste es un instrumento de formación de políticas efectivo; especialmente en políticas tan complicadas como la sanitaria.⁹⁰⁹ Si la Ley Sanitaria o los discursos no hubieran hecho referencia al excepcionalismo americano la probabilidad de que la Ley pasase el filtro constitucional y de recibir la aceptación y el gradual respaldo del pueblo americano se habría reducido considerablemente. Estas son, está claro, meras especulaciones. Pero el hecho de que el excepcionalismo americano sea utilizado por el presidente y por los que están en contra de

⁹⁰⁹ “La mayoría de los países desarrollados tienen un sistema de sanidad único, con una filosofía común sobre cobertura, acceso, y costes. No así los Estados Unidos. Aquí, los múltiples aspectos del acceso a la sanidad, su prestación y actuación hacen que la tarea de describir la sanidad en este país sea particularmente onerosa.” David Cutler and Patricia Keenan, “Health Care” in Peter H. Schuck and James Q. Wilson (eds.), *Understanding America*, Public Affairs, New York, 2008, p. 449.

la Ley en sí buena prueba de su eficiencia. Un tema de posible estudio sería el discernir hasta qué punto ha sido relevante el excepcionalismo americano para el éxito o fracaso de reformas sanitarias previas; por ejemplo, en la campaña para destruir el plan de Hillary Clinton de reformar la sanidad.

El nudo de la discordia yace en el mandato individual. Su implementación lleva consigo el reconocimiento legal del derecho a la sanidad por primera vez en la historia de los Estados Unidos.⁹¹⁰ Con el mandato individual, el tener un seguro sanitario es obligatorio para amplios grupos de población que hasta ahora han tenido que arreglárselas sin seguro, en concreto, los “sin-seguro” y los llamados beneficiarios absolutos *free riders*. Por esta razón la aprobación de esta ley por el Congreso⁹¹¹ no fue apoyada (por no decir algo más radical) por el partido de la oposición: en último extremo, este cuestionó la constitucionalidad de la ley y por eso se pidió al Tribunal Supremo que tomase una decisión al respecto.

Los dos argumentos básicos usados por ambos partidos en la batalla sobre el mandato individual, derechos individuales frente al rol del Gobierno son típicamente estudiados por expertos del excepcionalismo americano, historiadores, politólogos y abogados puesto que ambos yacen en el corazón de los valores americanos; ambos se remontan en la historia – el individualismo al momento de la formación de la frontera; la desconfianza del Gobierno al tiempo de la revolución por la independencia.

⁹¹⁰ Ver el capítulo 10.

⁹¹¹ “La dura oposición partidista hizo presencia desde la primavera de 2009 a la primavera de 2010, en cada uno de los numerosos pasos que llevó el aprobar los proyectos de ley por tres comités del Congreso más el Congreso en pleno, así como por dos comités del Senado y el Senado en pleno.” Lawrence and Skocpol, op. cit., 6.

Estos argumentos han sido del todo relevantes en las discusiones sobre el mandato individual. Obama es consciente de las implicaciones de cada argumento y por eso mira atrás en la historia y demuestra que en 1935 y 1965 aquellos que se oponían a la seguridad social y a Medicare usaban el mismo tipo de razonamientos.

Estos argumentos que pertenecen al excepcionalismo americano son usados por los contendientes de cada postura: los que están a favor de la LPPASA afirman que el hecho de que Estados Unidos no tenga cobertura universal es “un caso inaceptable de excepcionalismo americano;”⁹¹² el país no puede carecer de un sistema de financiación que haga accesible la prestación médica a la población en general. El mandato es expresión necesaria de la acción colectiva cuando tantos millones sufren por la falta de prestación sanitaria.

Los que están en contra de la LPPASA usan argumentos del excepcionalismo americano para considerar que la Ley Sanitaria es un instrumento de destrucción antiamericano, dañino, que con el tiempo destruirá al pueblo americano, a su espíritu y su propia idiosincrasia.⁹¹³ El mandato daña la soberanía del pueblo americano puesto que impide que cada individuo haga uso del derecho a decidir si compra o no un seguro. El mandato previsto en la Ley Sanitaria que fuerza al individuo a ir en contra

⁹¹² Paul Krugman, “Afflicting the Afflicted”, *The New York Times*, February 25, 2010.

⁹¹³ “En las elecciones de 2010 y de 2012, la Cámara de comercio americana difundió unos anuncios diciendo que la reforma sanitaria estaba ‘destrozando a las pequeñas empresas con billones en multas’ y con el tiempo ‘destruirá el empleo en América’. Después de que el Alto tribunal ratificase la ley, el gobernador republicano Rick Scott de Florida le dijo en Fox News que era ‘el mayor asesino de empleo jamás visto’.” John Tozzi, “Getting a Grip on Obamacare”, *Bloomberg Businessweek*, April 8 – 14, 2003, p 27.

de su derecho a permanecer sin seguro ignora el individualismo americano, y por eso es inconstitucional, sobre todo porque la posibilidad de no contar con cobertura universal está inextricablemente vinculado al credo americano. La imposición por la Ley Sanitaria de la cobertura universal, predecían los objetores de la Ley, no prosperará porque no contar con cobertura y tener la libertad de decidir si tener o no seguro es parte del excepcionalismo americano. También se argumenta que afecta negativamente a la relación entre el pueblo y el Gobierno, puesto que el mandato se hace efectivo por la acción del Gobierno cuando el rechazo a la acción de éste es valor clave del credo americano, tanto como lo es el individualismo. El mandato individual podría suponer un precedente peligroso para poner cortapisas al ejercicio de derechos individuales.

El problema es que algunos⁹¹⁴ no tienen opción de decidir –algunos enfermos no tienen los recursos para tener un seguro- y las compañías aseguradoras les dan la espalda bajo pretexto de la existencia de una condición pre-existente; o han contratado un seguro sanitario⁹¹⁵, pero en el último minuto y cuando el dueño de la póliza se pone enfermo la compañía aseguradora alega una mera razón de tipo formal para denegar la prestación a estos enfermos, que, en consecuencia, no pueden ser considerados pacientes. Esta situación (“el grado de vulnerabilidad ahí fuera era horroroso”)⁹¹⁶ ha sido atajada por la acción colectiva a pesar de la

⁹¹⁴ Algunos se refiere a 32 millones de americanos. Datos de Lawrence y Skocpol, op. cit., p. 4.

⁹¹⁵ Este es el caso de Natoma Canfield. Obama hace referencia a su caso varias veces y este trabajo lo documenta (Capítulo 7).

creencia acérrima en el poder del individualismo.⁹¹⁷ Es en este individualismo donde yace el meollo del excepcionalismo americano y en él está además el origen de las demandas judiciales en contra de la Ley Sanitaria. Esta es interpretada como una amenaza al régimen de libertades individuales de la persona, puesto que prioriza el rol del Gobierno al forzar la adquisición de un seguro, al crear los llamados intercambios, al extender la cobertura Medicare.

La Ley Sanitaria también adopta medidas típicas de prevención; esta es otra razón para alabar la ley: un objeto de estudio para comprobar la eficacia de la Ley podría consistir en observar y examinar cuántas vidas se salvan gracias a la implementación de estas medidas desde que entra en vigor la Ley. Otra materia de estudio sería la medicina preventiva en los Estados Unidos – estudiar sus principios y el origen histórico de esta diferente conceptualización de la medicina.

Desde el punto de vista metodológico, la contribución principal de este trabajo es el uso de los discursos para probar la existencia de un credo americano y cómo este está presente en la Ley y sin duda en sus previsibles consecuencias. La literatura que estudia el poder de la retórica en los discursos políticos es abundante y variada. Este trabajo desarrolla esta idea y va más allá al centrarse en el contenido de los discursos como reflejo del hecho de que la reforma tal y como está establecida por la Ley Sanitaria no va en contra de valores americanos típicos.

⁹¹⁶ Obama mantiene un debate informal sobre reforma sanitaria y la carta de derechos del paciente. Falls Church, Virginia. 22 Septiembre, 2010, 11:59. A.M. EDT.

⁹¹⁷ Ver capítulo 9.

Este trabajo demuestra que el excepcionalismo americano es tan antiguo como la nación y prueba que el tema no es una cuestión del pasado; es usado por la doctrina para identificar valores verdaderamente americanos en relación con Obama. El trabajo hace lo mismo pero añade un nuevo elemento al estudio: es original porque usa discursos del actual Presidente para probar el uso del excepcionalismo americano; y es específico ya que se centra en discursos sobre una política dada: la de sanidad. La metodología, por tanto, es original en que usa discursos en un tema dado para probar una cuestión determinada.

El análisis de artículos de la doctrina sobre la constitucionalidad de la Ley Sanitaria demuestra que los eruditos en el tema examinan la Ley Sanitaria para probar que la reforma de acuerdo con la Ley Sanitaria sigue o no los valores tradicionales, es decir, aquellos establecidos por el excepcionalismo americano. La doctrina además, usa el excepcionalismo americano como prueba decisiva para determinar el resultado posible de la decisión por el Tribunal Supremo. En este sentido, las discusiones acaloradas en los medios de comunicación sobre el posible resultado de la sentencia del Tribunal Supremo y toda la retórica de los debates de campaña podrían ser motivo de futuros estudios con esta idea *in mente*. Por ejemplo, cómo usan de diferente manera Obama y Mitt Romney⁹¹⁸ el excepcionalismo americano en la retórica de la campaña de 2012.

Este trabajo ha tenido que salvar la dificultad que supone que la constitucionalidad de la Ley Sanitaria se estaba revisando por el Tribunal Supremo en el momento de la redacción del trabajo. El mandato individual

⁹¹⁸ Candidato Republicano

era el tema de disensión principal antes de que se dictase sentencia. Así que el grueso de los artículos de la doctrina que se han usado fueron publicados antes de la sentencia. Nadie contaba con la firmeza, con la seguridad sobre la constitucionalidad que una sentencia dota a una ley.

En cada uno de los capítulos se han escogido determinados discursos que prueban un tema en concreto relacionado con el excepcionalismo americano. Sin embargo, y a pesar de que se han manejado 189 discursos, las características de un trabajo de este tipo han reducido la elección a un número determinado de discursos, aunque en el Apéndice estén todos recogidos. En la elección se ha tenido en cuenta el momento histórico en el que fueron pronunciados o simplemente el contenido del discurso o ambos a la vez. Como queda dicho en la Introducción, Obama nunca se queda corto en palabras, por lo que se incluye un Apéndice para probarlo; la selección es vasta – podrían haber escogido más discursos y así en ocasiones hago referencia a otros discursos distintos de los seleccionados cuando son relevantes para probar un punto en discordia. Con todo, esta tesis aclara los objetivos que se ha propuesto alcanzar y los discursos que elegidos sirven estos propósitos plenamente. Con toda seguridad, el incremento del número de discursos podría haber entorpecido el proceso de alcanzar el objetivo académico de escribir una tesis.

Materia diferente y caldo de especulación es discernir hasta qué punto fueron efectivas las referencias de Obama al excepcionalismo americano en los discursos sobre sanidad para convencer al pueblo americano sobre la viabilidad de su reforma. Por supuesto que la

efectividad de sus discursos no depende solamente de su contenido sino también de la maestría a la hora de pronunciarlos. Odom resume este punto:

“A pesar de los retos, como los reflejados en el debate sobre la reforma sanitaria, la elocuencia de Obama, su dominio de los medios, y la atención del público permanecen inalterados. Esta habilidad se considera que está profundamente enraizada en su talento implícito para dar esperanza y ánimos de manera continua al pueblo americano. Aceptar la interpretación de la crisis que hace el líder y creer en su habilidad para atajar los problemas calma el stress psicológico de sus seguidores producido por la pérdida de control creada como resultado de una crisis. [...] Su carisma, su habilidad para animar y motivar a través de sus discursos. [...] La propensión de Obama de comunicar altas expectativas al pueblo americano y el exhibir seguridad en la habilidad del pueblo de alcanzarlas fue crítica en su elección como primer presidente afro-americano, y como primer presidente en aprobar legislación sanitaria universal. Estas cualidades son consistentes con un líder que [...] intenta convencer a sus seguidores de conseguir un objetivo cada vez más difícil y un desarrollo de tipo moral.”⁹¹⁹

⁹¹⁹ Odom, loc. cit.

Skocpol resume el uso de los discursos del que llama un “presidente elocuente:” “En este discurso,⁹²⁰ como en otros discursos importantes sobre salud, Obama hizo lo que un presidente elocuente puede hacer mejor: centrar la atención del público en una prioridad, acorralar a los políticos vacilantes y dubitativos de Washington D. C., y demostrar una valiente determinación ante los grupos de presión buitres que merodean por Washington.”⁹²¹

Este trabajo describe los detalles, las dificultades prácticas del proceso legislativo para aprobar la Ley Sanitaria y cómo estas son reflejadas en los discursos. Esto es importante para entender hasta qué punto la Ley Sanitaria es una ley controvertida que tuvo que enfrentarse a numerosos impedimentos legislativos hasta su aprobación final. Estas barreras fueron utilizadas por miembros del partido opositor por razones vinculadas a conceptos del excepcionalismo americano, básicamente el incremento en costes y el derecho presuntamente inconstitucional a la sanidad basado en un concepto fallido de individualismo. Un tipo de crítica más moderado es la de aquellos que consideran que el Presidente podría haber hecho más.⁹²² Este tipo de crítica sirve como una excelente hoja de ruta para el futuro, es decir, las críticas proveen de una lista de pasos necesarios para mejorar la política sanitaria en el futuro. Este es, después de todo, un proceso permanente. Todavía hay mucho por hacer. La

⁹²⁰ Se refiere al discurso de 9 de septiembre de 2009.

⁹²¹ Lawrence y Skocpol, op. cit. p. 54.

⁹²² “Pero si el uso a tiempo del ‘bully pulpit’ fue efectivo, no sobreestimemos lo que puede hacer un presidente, bien con grandes discursos o dando ultimatós. A lo largo del esfuerzo por la reforma sanitaria, expertos y comentaristas han criticado de manera repetida a Obama por no hacer más para forzar los temas y forzar una reforma más atrevida.” Lawrence and Skocpol, op. cit., p. 55.

pregunta es si el objetivo último es igualar la provisión de sanidad pública a niveles europeos.⁹²³

El hecho de que el partido Demócrata perdiese las elecciones legislativas de mitad de mandato hizo más difícil todavía la aprobación de la Ley Sanitaria; pero esto supuso un incremento de legitimidad de la Ley puesto que hubo de aprobarse con el asentimiento del partido Republicano. Claro está que esta es la perspectiva optimista. Pero la verdad es que la Ley no fue aprobada en “un ambiente de calma política o buena voluntad” y de hecho, “antes de que entre en vigor la Ley Sanitaria en su totalidad [el 1 de enero de 2014], está cambiando la tendencia política a la hora de votar, en los tribunales, legislaturas, y burocracia. Cuánto sobreviva del plan original dependerá de decisiones políticas futuras y de futuras batallas políticas.” El futuro es incierto.

La legitimidad de la Ley es reforzada por la sentencia dictada por el Tribunal Supremo. Los numerosos recursos ante Tribunales inferiores y, en última instancia, el recurso de apelación ante el Tribunal Supremo son los mecanismos previstos por el sistema para rechazar la Ley Sanitaria por razones que van más allá de la mera letra de la Ley puesto que afectan a valores, costumbres, tradiciones enraizados en el pueblo. Éstos últimos tienen que verse reflejados en las políticas públicas. Si éstos no hubieran

⁹²³ “El país en el mundo que usa la proporción mayor de sus recursos en servicios sanitarios es los Estados Unidos. Medido bajo estándares nórdicos, sin embargo, apenas se puede considerar un estado de bienestar. El sistema de sanidad más caro del mundo no puede siquiera servir a su propia población – 40 a 50 millones de personas no están incluidas, porque no tienen un seguro de sanidad privado. El ‘pequeño paso’ de Obama en la dirección correcta es todavía una pálida imitación de los modelos europeos.” Wahl, op. cit. p. 41. Es el modelo europeo el modelo a seguir? Es éste el objetivo último, es decir, imitar a Europa?

tenido reflejo en la Ley Sanitaria, entonces hubiera sido declarada nula de pleno derecho.

Este trabajo examina las razones económicas para la reforma. Se prueba que los americanos se gastan más de lo que reciben a cambio en sanidad, es decir, el sistema se encuentra falto de equilibrio. Además, otra razón genuina para reformar es la deteriorada economía del sistema actual. Obama incluye estadísticas en este sentido con lo que parece correcto y lógico llevar a cabo la reforma. Los oponentes dicen que la reforma que propone supone un incremento insostenible de los costes. Aquellos a favor de la Ley Sanitaria aseguran que mantener la situación actual incrementará los costes de igual manera y que la reforma prevista por la Ley Sanitaria no incrementará el déficit actual. Cuando la Ley se debatía en los medios de comunicación y durante los debates de campaña en ambos sentidos, los costes de la sanidad fueron un argumento constante usado por cada partido para afirmar que la reforma sanitaria era o no era necesaria, o que la Ley establecía la forma correcta de reformar o no. La implementación del mandato individual y de los planes de expansión de Medicaid podría parecer que vayan a tener un efecto negativo en el incremento de los costes. Esto es rebatido una y otra vez por Obama, que insiste en que uno de los objetivos de la Ley Sanitaria es precisamente reducir los costes; si la reforma no se lleva a cabo los costes incrementarán exponencialmente. En cualquier caso, las cifras son datos incuestionables y por eso, en su momento (cuando la reforma se discutía en el Congreso), se utilizaron para concluir que, si no se hacía nada, el sistema caería en bancarrota.

La reforma es importante no solo desde un punto de vista económico puesto que hay un tema moral en juego.⁹²⁴ Este trabajo demuestra cómo los que están en contra de la reforma sanitaria han atacado esta perspectiva moral utilizando conceptos como el socialismo⁹²⁵ (y su correlativo medicina social) o el menos exagerado individualismo: la reforma para el bien común puede ser ideal pero no lo es el cómo se lleva a la práctica a través de las manos interesadas del Gobierno; la libertad de poder escoger del individuo debe de triunfar.

Obama usa este imperativo moral en los discursos para convencer a la gente que la reforma es una necesidad impuesta por la ética y que tal reforma llevada a cabo por el Gobierno no va en contra de la tradición. Consigue también modificar este imperativo moral dependiendo del tipo de contratiempo o de la situación política: añade el elemento de utilitarismo a su primer enfoque y más adelante utiliza una ética estratégica. Aunque algunos han tachado estos cambios de maniobras políticas,⁹²⁶ en última instancia prueban que Obama es un perfecto estratega que sabe llegar acuerdos y compromisos.

⁹²⁴ El tema moral en juego consiste en dar solución a los 46 millones que no tienen seguro sanitario.

⁹²⁵ La medicina pública tiene unos antecedentes difíciles en EE.UU. pues se consideraba que ocultaba elementos de comunismo. Roosevelt, por ejemplo, fue acusado de ser un traidor a su clase (provenía de una familia pudiente de Hyde Park, Nueva York) precisamente por haber promovido medidas sociales de carácter público con los planes New Deal.

⁹²⁶ Biden naturalmente afirma lo contrario, es decir, Obama siempre ha sido fiel a sus valores: “Se hace historia cuando un líder da un paso adelante, permanece fiel a sus valores, y diseña un devenir fundamentalmente diferente para su país.” Comentarios por el presidente y el vicepresidente en la firma del proyecto de ley de reforma del seguro sanitario. Ala Este. Washington D. C., 23 marzo, 2010, 11.29 A.M. EDT.

Cuando la Ley Sanitaria se estaba debatiendo en sede parlamentaria, ambos partidos estuvieron de acuerdo en el hecho de que el debate sobre la constitucionalidad de la Ley Sanitaria al final se reducía en esencia al papel del Gobierno en la vida de los americanos.

Este trabajo desarrolla esta idea al comparar a los Estados Unidos con otros miembros de la OCDE. Los resultados son concluyentes: la prestación pública de servicios sociales es baja en Estados Unidos comparado con esos otros miembros, pero el papel del Gobierno en regular el coste de la sanidad ha mejorado a pesar de la inexistencia de un sistema de sanidad público.

Considerar las razones de esta inexistencia lleva a estudiar otros elementos de excepcionalismo americano: no solo la falta de provisión de sanidad pública universal sino también la inexistencia de la concreción normativa del derecho a la salud de los ciudadanos; el mínimo rol jugado por los sindicatos en la lucha por un sistema público o la ausencia de grupos de presión que defiendan los intereses de los trabajadores en el área de sanidad pública; el efecto que el federalismo o su expresión en la estructura territorial del estado ha tenido en dilatar o impedir los planes para implementar un sistema de sanidad público; la relación que pueda existir entre la creación de un sistema de sanidad público y el racismo; la diferencia de intereses de los diferentes agentes implicados (pacientes, médicos, compañías aseguradoras) y finalmente el diferente grado de eficacia demostrado por las administraciones de las sucesivas presidencias de gobierno que llevaron a cabo reformas con el objetivo de implementar medidas de naturaleza pública. Todos estos factores tienen que ser tenidos

en cuenta para entender esta peculiaridad, este elemento de excepcionalismo americano.

La desconfianza en el Gobierno está anclada en razones históricas. De hecho, la separación de poderes establecida en la Constitución es expresión de esta desconfianza. Es un hecho verdaderamente excepcional que el Gobierno de los Estados Unidos desempeñe un papel tan pequeño en la prestación de sanidad pública comparado con otros países de la OCDE. Los predecesores de Obama han intentado varias veces cambiar esta situación, esta rareza que explica otros rasgos típicos del excepcionalismo americano. Las diferentes administraciones han hecho frente a esta situación con la aprobación de las llamadas superleyes; la Ley Sanitaria es un buen ejemplo de esto.

La reforma se ha intentado varias veces con anterioridad. Este trabajo explora el marco histórico de los múltiples intentos de reforma de una situación que ha ido empeorando con cada año desde que Teddy Roosevelt alabase la importancia de proveer de sanidad a los Americanos, “pues no hay país que pueda ser fuerte, cuya gente esté enferma y pobre.” La existencia de numerosos intentos fallidos incrementa la relevancia del logro que es el poder hablar de la LPPASA como instrumento legal alegable ante los tribunales. No es de extrañar que se haya dicho que es tan importante como la aprobación de otros dos programas públicos legendarios: Medicare y Medicaid.⁹²⁷ Del estudio de los intentos fallidos también se demuestra que de todos los agentes con voz y voto en el sector de la sanidad, las compañías aseguradoras podrían ser consideradas

⁹²⁷ Por la ministra Kathleen Sebelius.

directamente responsables de la situación lamentable de este sector económico en los Estados Unidos.

Otra conclusión basada en la experiencia es que la recesión influye en la formación de políticas destinadas a la adopción de medidas sociales. Dado que la Ley Sanitaria fue aprobada en medio de una de las peores recesiones de la historia, hace pensar que la desconfianza del Gobierno típica del excepcionalismo americano impone condiciones económicas difíciles (del tipo que hace que la gente pida ayuda al Gobierno) para dejar de lado esta desconfianza y esperar del Gobierno que implemente medidas típicas de bienestar como lo es la Ley Sanitaria. De la misma manera que el *New Deal* fue implementado para atajar los efectos de la Gran Depresión.

A la hora de implementar la Ley, el meollo de la disensión está en el *tour-de-force* entre la federación y los estados. Dos cláusulas constitucionales (la comercial y la necesaria y propia) permiten a la federación a través de congreso legislar en áreas que incumben a más de un estado, por ejemplo, regular las relaciones comerciales entre estados, también llamado, comercio intraestatal; y la federación puede regular tanto como sea necesario y propio, según la cláusula que lleva el mismo nombre. Las cláusulas entonces legitiman al Congreso para regular la política sanitaria.

Sin embargo, uno de los principales argumentos usados por los estados que impugnaron la Ley Sanitaria es que el seguro de sanidad o más bien la opción de no adquirir un seguro sanitario no puede ser considerado una actividad comercial. El Tribunal Supremo basa su decisión

en el poder de imposición tributaria del Congreso; de esta manera revoca la decisión del Tribunal de Apelación. Es interesante el hecho de que ninguno de los dos partidos políticos estimaron que la sanción establecida por la Ley Sanitaria para aquellos que deciden no comprar un seguro de sanidad tuviese la naturaleza de tributo. Este trabajo profundiza en estos aspectos prácticos de la relación entre la federación y los estados desde el punto de vista de la sanidad.

Con suerte, el aspecto más controvertido de la Ley Sanitaria, el mandato individual que tiene como objetivo el alcanzar la cobertura universal, sobrevivirá; al fin y al cabo fue la cuestión fundamental en discordia del recurso ante el Tribunal Supremo. El hecho de que las palabras “mandato individual” no sean mencionadas en los discursos y que las palabras “responsabilidad personal” sean preferidas son buena prueba de cuan controvertido es el tema.

Este trabajo aclara por qué el mandato individual es tan controvertido: las razones están relacionadas con aspectos del excepcionalismo americano. El mandato individual fue aprobado por el Congreso haciendo uso de las mencionadas cláusulas constitucionales fundamentales: la cláusula comercial y la cláusula necesaria y propia. Estas cláusulas han sido desarrolladas por el Tribunal Supremo. El alcance de estas cláusulas fue también debatido durante el mandato de Roosevelt cuando logró que se aprobase la ley que establecía la seguridad social en 1935; más de un siglo después Obama consigue que se apruebe la ley que establece la cobertura universal usando la misma base legal.

Otro tema es el estudio de otros mandatos en el área de la sanidad. De hecho, los mandatos individuales son frecuentes en sanidad.⁹²⁸ La razón de ser de estos mandatos públicos en sanidad es fácil de definir puesto que tienen como objetivo el bien común.⁹²⁹ Gostin⁹³⁰ estudia los precedentes legales y analiza casos como *Jacobson v. Massachusetts*.⁹³¹ En el centro de los precedentes históricos y de la propia ley (no sólo la LPPASA sino otras leyes como la que hace obligatoria la vacunación) aparece un argumento ético en juego: en estos casos la salud pública ha de triunfar sobre la libertad individual. Sería interesante ver el rol que estos polos han jugado en cada precedente histórico.

Este trabajo describe también cómo el mandato individual será puesto en práctica y a quiénes afectará. Obama hace referencia detallada a los intercambios o mercados de seguros sanitarios:⁹³² se refiere a su fuente

⁹²⁸ “Por ejemplo, leyes sobre vacunas son frecuentemente descritas como mandatos porque requieren (o por lo menos parecen obligar) a que la gente se vacune. De la misma manera leyes sobre el uso del casco o cinturones de seguridad son descritas como mandatos, también porque requieren que los individuos se involucren en una actividad que de otra manera renunciarían. [...] Como el mandato de la LPPASA, regulan a la gente simplemente porque ‘existen’.” Parmet, op. cit. p. 404.

⁹²⁹ En el caso de los seguros el bien común está claro: “Cuando decides vivir en una comunidad con gente que no tiene seguro, te está afectando a través de la ineptitud del sistema de salud público, el desvío de recursos. Te están poniendo en peligro por los efectos de los hospitales y los médicos en tu comunidad. Todos estamos en el barco juntos.” Reed Tuckson in *Baker*, loc. cit.

⁹³⁰ L. O., Gostin, “The National Individual Health Insurance Mandate,” *Hastings Center Report* 40, no. 5, Sept. / Oct. 2010, pp. 8-9.

⁹³¹ En este importante caso, el Tribunal Supremo ratificó la ley que exigía la vacunación de individuos durante una epidemia de viruela. El juez Harlan es famoso por haber dicho: “aquí hay diversas restricciones ante las que cualquier persona está sujeta por el bien común. [...] La sociedad organizada no podría existir sin la seguridad de sus miembros.” 197 U. S. 11 (1905).

⁹³² “Según la nueva reforma sanitaria, los consumidores podrán comprar en los mercados de seguros sanitarios planes sanitarios a precios competitivos que

de financiación, a su carácter opcional, a cómo su existencia no afectará a aquellos que ya se benefician de otros programas públicos. Estos mercados tienen como objetivo poner fin a los abusos en los que regularmente incurren las compañías aseguradoras y hacer frente a la situación de aquellos que libremente deciden no contratar un seguro sanitario (beneficiarios absolutos). Tanto Obama como aquellos que se oponen a este aspecto de la reforma usan elementos de excepcionalismo americano: el presidente menciona la igualdad como objetivo perseguido por la introducción de intercambios ya que la mera existencia de los beneficiarios absolutos es buena prueba de que la igualdad no es una realidad. Aquellos en contra de la reforma consideran que los intercambios o mercados de naturaleza pública son en efecto una ampliación inaceptable del alcance de la regulación por el Gobierno. Además, el hecho de que por el mandato individual se obligue a los jinetes libres a comprar un seguro o si no, a pagar un impuesto de acuerdo con el Tribunal Supremo; una sanción, de acuerdo con la ley) choca con la gran estima que se tiene en Estados Unidos por el individualismo. Los intercambios tienen como objetivo reducir el número de personas sin seguro que a su vez resolverá el costoso problema de la selección adversa al ampliar el número de asegurados y así prevenir la formación de lo que los actuarios de seguros llaman “espiral de muerte.” Es fácilmente predecible que una vez que el mandato individual se haya impuesto durante un período de

cumplen con los estándares comunes mínimos o incluso mejores. Los intercambios serán administrados por los estados y permitirán gestionar subsidios para pequeñas empresas e individuos de ingresos bajos o medios, para hacerles asequibles estos planes.” Lawrence R. Jacobs and Theda Skocpol, *Health Care Reform and American Politics*, Oxford University Press, Oxford, 2010.

tiempo sustancial, la doctrina estudiará el efecto del mandato en la selección adversa. Este es otro tema de estudio.

La carta de derechos pone fin a este trabajo – por primera vez una ley hace referencia a una carta de derechos en el campo de la sanidad. La Constitución establece el derecho a la felicidad y podría interpretarse que el derecho a la sanidad está incluido en este derecho a la felicidad: al fin y al cabo recibir malas noticias del médico no es fuente de felicidad; y mucho menos no poder recibirlas aunque sean malas. ¡Qué desgraciada se debe sentir una persona enferma al saber que no puede ser un paciente de hospital por razones puramente económicas! Esto es lo que la Ley Sanitaria trata de poner fin básicamente a través del mandato individual y a través de la expansión de Medicaid.

En conclusión, esta tesis proporciona un análisis de los discursos sobre sanidad de Obama que prueba que el Presidente usa el excepcionalismo americano para a su vez probar que la Ley Sanitaria no va en contra de esos valores, tradiciones e ideas englobadas en el concepto de excepcionalismo americano.